1954

Oct.	12	Trial by Court Commenced; Opening Arguments of Counsel heard in part and continued to October 13, 1954. --Lederle, J.
Oct.	12	Proof of Service.
Oct.	13	Trial held further; opening statements of Counsel held further & continued to October 14, 1954 @ 10:00 a. m. --Lederle, J.
Oct.	14	Trial held further, opening statements held further & continued to October 15, 1954 @ 9:30. --Lederle, J.
Oct.	14	Proof of Service.
Oct.	14	Proof of Service.
Oct.	15	Proof of Mailing.
Oct.	15	Trial held further, opening statements heard further & continued to October 26, 1954 @ 9:30. --Lederle, J.
Oct.	26	Trial by Court held further and continued to October 27, 1954. --Lederle, J.
Oct.	27	Trial by Court held further and continued to October 28, 1954. --Lederle, J.
Oct.	28	Trial by Court held further and continued to October 29, 1954. --Lederle, J.
Oct.	29	Trial adjourned to November 2, 1954 @ 9:30. --Lederle, J.
Nov.	2	Trial held further cont'd to November 3, 1954 @ 9:30. --Lederle, J.
Nov.	3	Plaintiff's Motion to Dismiss Counterclaims.
Nov.	3	Trial held further & cont'd to November 4, 1954. --Lederle, J.
Nov.	4	Trial held further & cont'd to November 5, 1954. --Lederle, J.
Nov.	5	Affidavit of Leo Boudinet.
Nov.	5	Affidavit Re Counterclaim.
Nov.	5	Trial held further & cont'd to November 9, 1954. --Lederle, J.
Nov.	9	Order granting application to withdraw. --Lederle, J.

1954

Nov. 9	Trial held further & cont'd to November 10, 1954. --Lederle, J.
Nov. 10	Trial held further & cont'd to November 12, 1954. --Lederle, J.
Nov. 10	Proof of Mailing.
Nov. 12	Trial held further & cont'd to November 16, 1954. --Lederle, J.
Nov. 16	Trial held further & cont'd to November 18, 1954. --Lederle, J.
Nov. 18	Trial held further & cont'd to November 19, 1954. --Lederle, J.
Nov. 19	Trial held further & cont'd to November 23, 1954. --Lederle, J.
Nov. 23	Trial held further & cont'd to November 24, 1954 @ 9:30 a. m. --Lederle, J.
Nov. 24	Trial held further and cont'd to November 26, 1954 at 10:00 a. m. --Lederle, J.
Nov. 26	Trial held further and cont'd to November 29, 1954, at 9:00 a. m. --Lederle, J.
Nov. 29	Trial held further and cont'd to November 30, 1954, at 9:30 a. m. --Lederle, J.
Nov. 30	Trial held further and continued to December 1, 1954, at 9:30 a. m. --Lederle, J.
Dec. 1	Trial held further and cont'd to Dec. 7, 1954. --Lederle, J.
Dec. 7	Trial held further and cont'd to Dec. 8 at 9:00 a. m. -- Lederle, J.
Dec. 8	Trial held further and cont'd to December 9, 1954 at 9:30 a. m. --Lederle, J.
Dec. 9	Order Designation C. P. A. Johnson etc. --Lederle, J.
Dec. 9	Trial held further and cont'd to December 10, 1954. -- Lederle, J.
Dec. 10	Trial held further and cont'd to December 14, 1954. -- Lederle, J.
Dec. 14	Trial held further and cont'd to December 15, 1954, at 2. -- Lederle, J.

Docket Entries

1954	
Dec. 15	Trial held further and cont'd to December 17, 1954, at 2.--Lederle, J.
Dec. 16	Proof of mailing.
Dec. 17	Trial held further and cont'd to December 21, 1954, at 2.--Lederle, J.
Dec. 21	Trial held further and cont'd to December 22, 1954, at 9:30 a. m.--Lederle, J.
Dec. 22	Trial held further and cont'd to December 28, 1954, at 9:30 a. m.--Lederle, J.
Dec. 28	Trial held further and cont'd to December 29, 1954, at 9:30 a. m.--Lederle, J.
Dec. 29	Trial held further and cont'd to December 30, 1954, at 9:30 a. m.--Lederle, J.
Dec. 30	Trial held further and cont'd to December 31, 1954, at 9:30 a. m.--Lederle, J.
Dec. 31	Trial held further and cont'd to January 4, 1955 at 9:30.--Lederle, J.
1955	
Jan. 4	Trial held further and cont'd to January 5, 1955 at 9:30.
Jan. 5	Trial held further and cont'd to January 6, 1955 at 9:30.--Lederle, J.
Jan. 6	Order Re Accountant.--Lederle, J.
Jan. 6	Trial held further and cont'd to January 7, 1955 at 9:30.--Lederle, J.
Jan. 7	Trial held further and cont'd to January 12, 1955 at 9:30.--Lederle, J.
Jan. 12	Trial held further and cont'd to January 13, 1955 at 9:30.--Lederle, J.
Jan. 13	Trial held further and cont'd to January 14, 1955 at 9:30 a. m.--Lederle, J.

1955

Jan.	14	Trial held further and cont'd to January 19, 1955 at 9:30 a. m. --Lederle, J.
Jan.	19	Trial held further and cont'd to January 20, 1955 at 9:30 a. m. --Lederle, J.
Jan.	20	Trial held further and cont'd to January 21, 1955 at 9:30 a. m. --Lederle, J.
Jan.	21	Trial held further and cont'd to January 26, 1955 at 9:30 a. m. --Lederle, J.
Jan.	26	Trial held further and cont'd to January 27, 1955 at 9:30 a. m. --Lederle, J.
Jan.	27	Trial held further and cont'd to January 28, 1955 at 9:30 a. m. --Lederle, J.
Jan.	28	Trial held further and cont'd to February 2, 1955 at 9:30 a. m. --Lederle, J.
Feb.	2	Trial adjourned to Feb. 3, 1955 req. all concerned. --Lederle, J.
Feb.	3	Trial held further & cont'd to Feb. 4, 1955. --Lederle, J.
Feb.	4	Trial held further & cont'd to Feb. 9, 1955. --Lederle, J.
Feb.	7	Return on subpoena to Rakow, served 2-7-55.
Feb.	9	Order appointing amicus cruiae, Frank H. Boos. --Lederle, J.
Feb.	9	Trial held further & cont'd to 2-10-55 @ 9:30. --Lederle, J.
Feb.	10	Motion to quash subpoena issued against Edward H. Rakow, an employee of the U. S. Sec. noticed 2-10-55.
Feb.	10	Trial held further and cont'd to February 11, 1955, hrg. on motion of S. E. C. held in part and cont'd to February 11, 1955.
Feb.	11	Trial held further and cont'd to February 15, 1955, hrg. on motion held further & held in abeyance until February 24, 1955 @ 9:30 a. m. --Lederle, J.
Feb.	15	Trial held further & continued to February 17, 1955 @ 9:30 a. m.
Feb.	17	Return of subpoena to Holefca & Assoc.

1955

Feb. 17	Trial held further and continued to March 2, 1955 @ 9:30 a. m. --Lederle, J.
Mar. 1	Return of subpoena, served on Rakow on or about Dec. 28, 1954.
Mar. 1	Trial held further & cont'd to 3-2-55. --Lederle, J.
Mar. 2	Order adjudicating Wm. H. Timbers, General Counsel S. E. C. Guilty of Contempt of Court, and True Copy of Tender of S. E. C. --Lederle, J.
Mar. 2	Trial held further and cont'd to 3-3-55. --Lederle, J.
Mar. 2	Appearance of Wm. Timbers, Per Se.
Mar. 2	Notice of Appeal of William H. Timbers filed.
Mar. 3	Proof of Mailing of Notice of Appeal of Wm. Timbers.
Mar. 3	Trial held further and cont'd to March 4, 1955. --Lederle, J.
Mar. 4	Trial held further and cont'd to March 8, 1955 @ 9:30. -- Lederle, J.
Mar. 4	Letter to Wm. H. Timbers, Gen'l Counsel, Re Appeal Fees from Clerk.
Mar. 4	Cert. Copy of C. A. of Stay Order filed and entered, Simons, C. J.
Mar. 7	Notice of Appeal of U. S. Securities & Exchange Commission and William H. Timbers filed.
Mar. 8	Trial held further and cont'd to March 9.
Mar. 9	Trial held further and cont'd to March 10.
Mar. 10	Trial held further and cont'd to March 11.
Mar. 10	Return of cir. crt. on amended stay order.
Mar. 11	Trial held further and cont'd to March 16.
Mar. 14	Letter of Wm. H. Timbers re appeal filed.
Mar. 14	Notice of appeal of U. S. Securities and Exchange Commission filed.

1955

Mar. 14	Proof of mailing filed.
Mar. 16	Trial held further and cont'd to March 17.
Mar. 17	Trial held further and cont'd to March 18.
Mar. 18	Trial held further and cont'd to March 22.
Mar. 22	Trial held further and cont'd to March 23.
Mar. 23	Trial held further. Both sides rest; argument of counsel heard in part, and cont'd to March 29, 9:30.
Mar. 23	Notice of appeal of U. S. Securities and Exchange Commission.
Mar. 23	Proof of mailing of notice of appeal.
Mar. 29	Arguments held further and cont'd to March 30, 1955.
Mar. 30	Arguments held further and cont'd to March 31, 1955.
Mar. 31	Arguments held further and cont'd to April 1, 1955 @ 10:00 a. m.
Apr. 1	Arguments held further and cont'd to Apr. 6, 1955.
Apr. 6	Arguments held further and cont'd to April 13, 1955.
Apr. 7	File, Transcript and Exhibits of Voting Trustees and S. E. C. to C. C. A. for 6th Circuit.
Apr. 7	Plaintiffs' motion to file supplement to amended and Supplemented complt, Notice/P/S -
Apr. 12	Defts' Answer to Motion for Leave to File Amended and Supplemental Complaint.
Apr. 13	Arguments held further and continued to April 14, 1955 @ 10.
Apr. 14	Arguments held further and continued to April 15, 1955.
Apr. 19	Arguments held further and continued to April 26, 1955.
Apr. 27	Arguments held further and continued to May 3, 1955 Testimony to be reopened as to Huber.
May 3	Order granting Plaintiffs' Motion to File Supplemental to Amended and Supplemented Complaint.

1955		
May	3	Trial testimony of Defendant Huber held in part and continued to May 4, 1955, Arguments of Counsel to be held further on May 4, 1955 at 11:00 a. m.
May	4	Trial held further and cont'd to May 6, 1955.
May	4	Order Vacating Order Providing For Delayed Annual Meeting.
May	5	Proof of Service of Order granting Plaintiffs' Motion to File Supplement to Amended & Supplemented Complaint.
May	6	Return of subpoena on Monroe State Savings Bank and Leo Boudinet, served 5-5-55.
May	6	Appearance of John Beck as Counsel for witness Boudinet.
May	6	Trial held further and continued to May 12, 1955.
May	12	Trial held further and continued to May 13, 1955.
May	13	Supplement and amended complaint.
May	13	Defendant voting Trustees' Answer to Supplement amended and Supplemental Complaint.
May	13	Trial held further and continued to June 2, 1955 at 9:30 a. m.
May	13	Proof of Service of Notice of Filing Supplemental Complaint.
May	16	Motion of Defendant Huber to Dismiss, Findings of Fact, Conclusions of Law.
May	31	Ind. Defendants Knapp, Raney, Blum, Leathers and Sempliner Answer to Supplement, Amended and Supplemental Complaint.
June	2	Trial held further and continued until after October 1, 1955.
Aug.	4	Findings of Fact and Conclusions of Law in re Partial Final Judgment in accordance with Rule 54 (b).
Aug.	4	Judgment - (money & Injunction).
Aug.	5	Proof of Service.
Aug.	5	Proof of Mailing.
Aug.	5	Notice of Appeal filed.

1955

Aug.	5	Costs bond in $250.00 filed - National Surety Corporation.
Aug.	8	Proof of Mailing filed.
Aug.	5	Order correcting Errors in Findings of Fact and Conclusions of Law under 60(a).
Aug.	9	Order Correcting Errors in Judgment under 60(a).
Aug.	9	Proof of Mailing.
Aug.	12	Stay Order filed by Circuit Judge Simons.
Aug.	17	Supersedeas Bond filed by Defendants.
Aug.	17	Transcript filed - (11 Vol.).
Sept.	8	File mailed to C. A.
Sept.	9	Return on receipt of Appellate Court
Sept.	20	Order for trial on Dec. 30, 1955 @ 9:30 A. M. & P. M. Lederle, J.
Nov.	17	Mandate of Circuit Court filed.
Dec.	30	Trial adjourned without date - held pending determination of decision of C. A.

1956

Aug.	24	Mandate of the Sixth Circuit Court of Appeals on first judgment - reversed.
Sept.	19	Plaintiffs' Requests for Admissions of Fact and Proof of Service.
Oct.	3	Order of reassignment filed and entered. Lederle, J. & Picard, J.
Oct.	22	Defts' answer to ptfs' request for admission of facts, filed.
Oct.	22	Defts' objections to requests for admission of facts, filed - Hearing Oct. 29.
Oct.	22	Defts' motion for security for costs, filed - Hearing Oct. 29/56.
Nov.	26	Affidavit of John P. Kinsey, filed.
Nov.	26	Hearing on motion for security for costs held in abeyance, objections to requests for admissions submitted. -- Picard, J.

Docket Entries

1956	
Dec. 7	Deft's supplemental response to ptf's request for admission of facts, filed.
Dec. 10	Hearing on objections to requests for admissions adj. to Dec. 12/56. -- Picard, J.
Dec. 13	Hearing on objections to requests for admissions submitted.
Dec. 17	Motion of George J. Huber for summary judgment of no liability for money damages, filed - Hearing Jan. 7/57.
Dec. 31	Substitution of attorneys for defts., filed.
1957	
Jan. 2	Pft's motion to file amendment to amended and supplemented complaint filed. Hearing Jan. 7/57.
Jan. 3	Ptf's objections to motion of Huber for summary judgment and proof of service.
Jan. 4	Requests for admission of facts of Monroe Paper Products Co., filed.
Jan. 7	Transcript of Dec. 13/56, filed and returned.
Jan. 7	Motion to file amendment to amended and supplemented complaint heard and gr. Hearing on motion for summary judgment held in abeyance. Pre-trial had. -- Picard, J.
Jan. 18	Proof of service of ptf's answers to Monroe Paper Products Company's requests for admission of fact, filed.
Jan. 30	Complaint as amended and supplemented with proof of service filed.
Jan. 31	Order re: objections to ptf's request for admissions of fact filed and entered.
Feb. 4	Order amending order re: objections to requests for admission of fact, filed and entered.
Feb. 7	Deft's further reply to request for admissions, filed.
Feb. 12	Motion of deft. George J. Huber to dismiss filed - Hearing Mar. 18/57.

Docket Entries

1957	
Feb. 20	Answer of deft. voting trustees to amended complaint filed.
Feb. 25	Answer of Monroe Paper Products Co., to complaint as amended and supplemented, filed.
Mar. 11	Additional requests for admission of facts of deft. Monroe Paper Products Co. filed.
Mar. 15	Answer of defts. Burton S. Knapp, et al., to second amended and supplemented complaint filed.
Mar. 15	Demand for jury trial of Burton S. Knapp, et al., filed.
Mar. 18	Order denying deft. Huber's motion to dismiss w/o prejudice filed & entered.
Mar. 18	Pre-trial hearing set for Apr. 15/57. Picard, J.
Mar. 20	Proof of service filed.
Mar. 21	Ptf's motion to enter order restricting jury trial filed.
Mar. 25	Motion to enter order restricting jury trial heard and submitted.
Mar. 27	Answer of Deft. George J. Huber to amended and supplemented complaint, filed.
Mar. 28	Ptf's motion to strike or restrict voting trustees' demand for jury trial filed - Hearing Apr. 1/57.
Apr. 3	Proof of service filed.
Apr. 10	Answer to second amended counterclaim of defts. Knapp, et al., filed.
Apr. 22	Pre-trial had. -- Picard, J.
Apr. 29	Pre-trial adj. w/o date. -- Picard, J.
June 12	Ptf's motion for summary judgment as to the voting trust filed - Hearing June 24/57.
June 19	Affidavit of Burton S. Knapp, et al., filed.
June 24	Request for admissions, filed.
June 26	Hearing on motion for summary judgment (Held in Bay City) submitted. -- Picard, J.

1957

July	5	Affidavit of John P. Kinsey in support of Ptf's motion for summary judgment, filed.
July	19	Proof of service and ptf's answers to deft. voting trustees request for admissions, filed.
July	22	Ptf's interrogatories with proof of service filed.
July	30	Opinion of the Court filed and entered. -- Picard, J.
Aug.	1	Order correcting errors in findings of fact, conclusions of law and decision filed and entered. -- Picard, J.
Aug.	1	Partial final judgment filed and entered. -- Picard, J.
Aug.	1	Motion for supersedeas etc. on Aug. 1, 1957 filed.
Aug.	1	Order denying motion for supersedeas and stay filed and entered. -- Picard, J.
Aug.	2	Notice of appeal filed.
Aug.	2	Proof of mailing filed.
Aug.	5	Proof of service of Order correcting errors in findings of fact, etc. and order denying motion for supersedeas and stay, filed.
Aug.	5	Proof of service of notice of entry of partial final judgment filed.
Aug.	5	Defendant voting trustees' answer to pltfs' requests for admissions etc. filed.
Aug.	6	Ptf's cross appeal filed.
Aug.	6	Cost bond on appeal in $250.00 filed - American Bonding Co. of Baltimore, filed.
Aug.	7	Proof of mailing filed.
Aug.	9	Certified copy of Order granting stay of proceedings pending appeal and fixing amount of supersedeas bond filed. - Simons, C. J.
Aug.	9	Supersedeas bond in the amount of $100,000.00 filed - Seaboard Surety Co. surety.
Aug.	12	Transcript of June 26, 1957 filed.

COMPLAINT - AS AMENDED AND SUPPLEMENTED

(Filed January 25, 1957)

PLAINTIFFS -

JOHN P. KINSEY, individually, and as Director and a shareholder of Monroe Paper Products Company, a Michigan corporation; hereinafter sometimes referred to as "Monroe Company" or "company."

LAWRENCE G. KUNKEL, also known as L. G. Kunkel, individually and as a shareholder of said Monroe Paper Products Company, and

THE WATERBURY CORRUGATED CONTAINER CO., a Connecticut corporation, hereinafter sometimes referred to as "Waterbury Co." or "Waterbury," individually and as a shareholder of said Monroe Paper Products Company,

amending and supplementing their Complaint filed herein February 2, 1954 as heretofore amended and supplemented, and complaining against the above named defendants and each of them, allege that:

Jurisdiction

The grounds upon which jurisdiction of the Court herein depends are:

The matter in controversy exceeds the sum and value of $3,000 exclusive of interest and costs and:

(a) Is between plaintiffs, all of whom are citizens of the State of Connecticut and defendants, all of whom are citizens of the State of Michigan.

(b) Arises out of a law of the United States, i.e., the Sherman Anti-Trust Act, 15 USC §§ 1-7, the Clayton Act, 15 USC §§ 12-27, and the Securities Act of 1933, 15 USC §§ 77a-77aa.

COUNT ONE

1. At all times hereinafter mentioned,

(a) Each of plaintiffs JOHN P. KINSEY and LAWRENCE G. KUNKEL was, and still is, a citizen of the State of Connecticut, and

(b) Plaintiff, THE WATERBURY CORRUGATED CONTAINER CO., was, and still is, a corporation organized and existing under the laws of the State of CONNECTICUT, and a citizen of said state, with its principal office and place of business in Waterbury, Connecticut.

(c) Each of defendants BURTON S. KNAPP, CHARLES E. RANEY, GEORGE A. BLUM, DON B. LEATHERS, ARTHUR W. SEMPLINER, and GEORGE J. HUBER was, and still is, a citizen of the State of Michigan, and a resident of the Eastern District of Michigan, Southern Division.

(d) Defendant MONROE PAPER PRODUCTS COMPANY was, and still is, a corporation organized and existing under the laws of the State of Michigan, and a citizen of said state, with its principal office and place of business in Monroe, Eastern District of Michigan, Southern Division.

2. Defendant, Monroe Paper Products Company, was incorporated as a Michigan corporation on or about March 20, 1920, and since then has been engaged in the business of manufacturing, supplying and selling paper and paper container products in the midwest area of the United States. Its authorized and outstanding capital stock, during 1953 was, and still is, 190,000 shares of $1 par value common stock, of which, since June 1, 1953, a total of 186,671 shares are held by the public and 3,329 have been acquired by, and are held in the treasury of, said company.

3(a). At the time of the death of Alex J. Groesbeck on March 10, 1953, and for many years prior thereto -

Said Groesbeck was the president and one of the eight-member board of directors of the Monroe Company and the largest single stockholder thereof, and, to a considerable extent dominated and controlled its officers, directors and affairs;

Defendant Raney was the company's vice-president, general manager and a director; defendant Blum was the company's secretary, treasurer and a director, and defendants Knapp and Leathers were directors of the company.

(b). On June 26, 1953, at a directors meeting said Knapp was elected to succeed said Groesbeck as president, and Joseph A. Moynihan, Jr. was elected to succeed said Groesbeck as a director, of the company. On September 23, 1953 defendant Sempliner was elected to succeed said Moynihan. Said Raney, Blum and Knapp have continued to date to hold said offices and they and said Leathers and Sempliner have continued to be a majority of the company's board of directors.

(c). Among the holders of stock in Monroe Paper Products Company at the time of the death of said Groesbeck, and for a long time prior thereto, were: said Groesbeck 32,814-1/2 shares; said Raney 9,051-7/8 shares; said Raney or his wife 2,468 shares; said Knapp 375 shares; said Blum and his wife 2,000 shares; said Leathers 5,339 shares; said Sempliner 300 shares and his mother 7,203 shares; said Huber 375 shares and Hugh Francis 1,000 shares. In addition, at said times, 6,595 shares were owned by a charitable foundation, for which investment plaintiffs believe said Groesbeck and his fiduciaries were responsible, and a substantial number of additional shares were owned by Hugo Krave, Margaret Simmons and other associates of said Groesbeck other than defendants. Said Leathers, at said times, was also one of the beneficial

owners of 2,000 shares held by Monroe State Bank, Trustee of Lillian G. Leathers Estate. No diminution has occurred in the stock holdings of said Raney, Raney and wife, Knapp, Blum and wife, Leathers, Leathers Estate trust, Sempliner, his mother, Huber or Francis until the deposit of such stock in 1954 under the voting trust as hereinafter alleged.

4. For upwards of ten years prior to the death of said Groesbeck it was the policy and practice of the company, approved by its stockholders and directors including defendants herein, to:

(a) Not induce or allow company suppliers or customers or their brokers or agents to become stockholders.

(b) Have the company officers, and particularly said Groesbeck and defendant Raney, both directly, through the company office and through Monroe banks, purchase company stock on the open market, at market prices, on behalf of the company and transfer the same to the company's treasury for periodic retirement, thus assuring the shareholders, who desired to sell, a market for their stock at market prices, increasing the equity of the remaining shareholders and preventing suppliers and customers and their brokers or agents from becoming stockholders.

(c) Maintain a conservative policy as to payment of salaries to officers and to office and other salaried personnel; avoid costly and long term commitments for pension and retirement plans; refuse to spend company funds for appraisals of machinery and assets; make only conservative dividend

distributions to stockholders, and to maintain substantial cash reserves and reinvest large sums in needed plant improvements and in replacement or modernization of plant equipment, a large part of which was, and still is, of great age, obsolete and out-dated and some of which was purchased second-handed.

5. In September 1952, at the last annual stockholders' meeting prior to the death of said Groesbeck, and in conformity with the aforesaid long standing company policies, the company stockholders:

(a) Under the leadership of defendant Knapp and of the trust officer for the Monroe State Savings Bank and in preference to an increase in dividends, unanimously recommended that $148,000 be expended for a list of capital improvements suggested by defendant Raney.

(b) Retired 10,000 shares of the company stock previously purchased by the company and held in its treasury, and authorized the company officers to purchase on behalf of the company an additional 10,000 shares at market price if and when any of its stockholders were desirous of selling.

6. Pursuant to the last mentioned resolution, and from about September 1952 until about June 1, 1953 the company, through its officers and directors and primarily through defendant Raney and the office of said Groesbeck, purchased for the company's treasury approximately 3,329 shares of its stock, still leaving 6,671 shares unpurchased under said resolution, and during said period purchased no stock for their individual benefit.

7(a). At all times subsequent to the death of said Groesbeck, defendants Raney, Blum, Knapp and Leathers, and each of them, and at all times subsequent to his election as director defendant Sempliner, as officers and/or as directors of the Monroe Company, owed to the company and to all of its stockholders the duty and obligation:

(1) To use their fiduciary and official positions, and the funds, credits, facilities, and services of employees, of the company, and its relations with suppliers, customers and others having business dealings with it, the corporate opportunities of the company and the opportunities coming to said defendants by reason of their said relationship to it, and their discretion covering, and control over, all thereof, solely for the company's benefit and that of all of its stockholders, and not for the personal or particular benefit of said defendants or any of them or of any segment of the stockholders, or to the detriment of the other stockholders or of any portion thereof.

(2) To assume no position, and in any event not to act in any position or situation, wherein the private interest of said defendants or any of them would, or would be likely to, conflict with their fiduciary and official duties and obligations to the company or to the other stockholders or of any portion thereof.

(3) To subordinate their private interests to those of the company and its stockholders, if their private interests conflicted or would be likely to conflict with the performance

and discharge of their fiduciary and official duties and obligations.

(b). At all times subsequent to the death of said Groesbeck, defendants Sempliner and Huber, as stockholders in the company, owed to the company and all of its stockholders the duty and obligation not to become a party to or participant in or to join in any plan, scheme, conspiracy or course of conduct whereby defendants Raney, Blum, Knapp and Leathers, or any of them, would or did violate their fiduciary or official duties and obligations to the company and its stockholders, or whereby the fiduciary and official positions of company officers and directors and their relations with company suppliers, customers and others having business dealings with it, and/or the funds, credits, facilities, services of employees and corporate opportunities and the opportunities coming to said defendant officers and directors by reason of their relationship to the company, would be or were used for the personal benefit of said Sempliner and Huber or either of them, or of the other defendants or any of them.

8. Shortly after the death of said Groesbeck on March 10, 1953 defendants Raney, Knapp, Blum, Leathers and Huber entered into and upon a plan, scheme and conspiracy, actively and in association with other persons thereafter to become associated with them therein to:

(a) Enhance their private interests and the sale or trading price of the stock in Monroe Company then owned and thereafter to be acquired by said defendants and those to become associated with them - to the detriment of the company

and its other stockholders.

(b) Accomplish such enhancement by making the stock then owned and thereafter acquired by them the controlling stock in the company; by securing to themselves control over the sale of the controlling stock; by securing and retaining control over the management of the company by diverting the company's stock-purchase opportunities to said defendants and those who were cooperating or would cooperate with them and by preventing any other stockholders from being able to sell a majority or all of the stock in the company or to make such a sale at a price not agreeable to said defendants, and by preventing any sale of all or a majority of the stock in the company for the equal benefit of all of its stockholders.

(c) Acquire the Groesbeck stock, obstruct and prevent the sale thereof to others, and to depress its value and the sale price of said stock and that of stockholders not participating in or assisting in the carrying out of said plan, scheme and conspiracy.

(d) Use the fiduciary and official positions and influence of said defendants Raney, Blum, Knapp and Leathers, and their relations with suppliers, customers and others having business dealings with the company, and the company's funds, credits and facilities and the services of employees of the company, in accomplishing the objectives set forth in

divisions (a), (b) and (c) of this paragraph 8.

9. Among the steps taken in furtherance of said plan, scheme and conspiracy were:

(a) Efforts by defendants Raney, Blum, Knapp, Leathers and Huber to acquire for themselves and others of a participating group, the, or the control of the, Groesbeck stock or a substantial interest therein;

(b) Control of the voting rights as to a majority of the outstanding stock in the company by acquisition of additional stock or options thereon and/or of proxies therefor;

(c) Filling of the office of president of the company and the election of a director to succeed said Groesbeck;

(d) Employment and use of attorneys paid by the company;

(e) A campaign in opposition to an offer of the National Container Corporation to purchase stock in the company and the creation of an escrow arrangement for the purchase of additional stock in the company and the creation of a voting trust - all as hereinafter more specifically alleged.

10. Following the death of Groesbeck, and for the purpose of carrying out said plan, scheme and conspiracy, the following acts were progressively committed:

(1) Raney, Blum, Knapp and Leathers, hoping that Moynihan, as attorney for one of the Groesbeck heirs, would be able, and would lend his efforts, to prevent or delay

the sale of the Groesbeck stock to others, informed Moynihan, or caused him to be informed, that they, as a majority of the directors of the company, desired that he become and remain a director of the company as successor to Groesbeck.

(2) Raney, Blum, Knapp and Leathers, notwithstanding that they had been close associates of Groesbeck and of his associate Hugo Krave and Margaret Simmons who had become the fiduciaries of his estate, and notwithstanding that Krave was and had been an experienced director of the company for many years and that he and Simmons had worked in close cooperation with said defendants on company matters, decided to prevent Krave from succeeding Groesbeck as company president and to prevent Simmons from being elected as a director, and, instead, that Knapp, who had and still has, little knowledge of the company's business would be made company president thereby increasing Raney's control over all phases of the company's business and affairs.

(3) On June 26, 1953, Raney, Blum, Knapp and Leathers prevented Krave from being elected as such president and Simmons from being elected such director, and, instead, elected Knapp as president and Moynihan as director, respectively. Shortly thereafter, Raney, Blum, Knapp, Leathers and Huber unsuccessfully endeavored to purchase the Groesbeck stock in the company or a substantial interest therein at $7 per share, a price far less than that for which it was sold to

plaintiffs within a few months thereafter by the estate fiduciaries.

(4) The aforesaid efforts of Raney, Blum, Knapp, Leathers and Huber in respect of the Groesbeck stock and the election of Knapp and Moynihan created a cleavage between said defendant directors - officers of the company on the one hand, and the other directors and the fiduciaries of the Groesbeck estate and former associates of said Groesbeck on the other hand - with the result that Raney, Blum, Knapp and Leathers from thenceforth assumed and exercised dominant management and control of the company and the Groesbeck representatives, the said charitable foundation, Krave, Simmons and other non-defendant former Groesbeck associates thereupon undertook to sell the 70,000 to 75,000 shares of stock in the company owned or represented by them.

(5) Said Francis and the father of defendant Sempliner, both owners of a large amount of stock in the company, were close former attorney and business associates of Groesbeck. Fearing that Francis, defendant Sempliner and his mother would join in a sale of their stock in the event the Groesbeck stock was sold to other than Raney and his group, Raney, with the consent, approval and cooperation of Blum, Knapp and Leathers, undertook to get Francis and defendant Sempliner into association and cooperation with them and in their objectives, but at the company's expense. To such end Raney, in July or early August 1953, consulted Francis who thereupon rendered an opinion to

Raney that as general manager of the company Raney had authority to do anything that the company's board of directors had the power to ratify.

(6) Since about June 1, 1953, the defendant officers - directors have purposefully made no purchases of company stock for the company's benefit, but, contrary to the long standing company practices and policies and the resolution of stockholders referred to in paragraphs 4 and 5, ante, and contrary to the best interests of the company, have diverted to themselves, company employees, company suppliers and customers and their brokers and agents, friendly to and cooperating with said defendants, all opportunities to purchase and retire portions of the company's outstanding capital stock offered for sale to the company or to the defendant officers-directors or otherwise made available for purchase. As a means of being able to induce and of inducing stockholders not to sell their stock in the event the Groesbeck stock was sold to others than the Raney group or those friendly to or cooperating with them, Knapp, as company president, on company letterheads and at company expense, wrote the stockholders two letters, one on July 17, 1953 requesting that before offering their stock for sale the stockholders contact the defendant officers, and the other on July 30, 1953, promising, in effect, that regular quarterly dividends at a 50% increased rate would thereafter be paid on company stock.

(7) In the meantime Raney and Huber, with the consent of Knapp, Blum and Leathers, endeavored, unsuccessfully, to obtain financial assistance to acquire stock of Groesbeck and his associates, and permitted certain company employees who were cooperating with the Raney group to purchase and retain stock that was available to the company for retirement.

(8) Without board authorization and despite prior board refusal for more than five years, Raney, with the approval of Blum, Knapp and Leathers, on August 4, 1953 and in the company's name and upon its credit and at its expense of over $4,500, ordered an insurance-purpose appraisal of the company's machinery and equipment, well knowing that such appraisal would not be made on the basis of fair market value or original or depreciated cost of the items appraised; it being the intention of Raney and his associates ultimately to use such appraisal in their efforts to dissuade stockholders from selling their stock in the event the Groesbeck stock was sold to other than the Raney group and to induce stockholders to cooperate in the efforts of the Raney group to carry out the objectives of said plan, scheme and conspiracy.

(9) In August 1953 several parties, including plaintiffs, became interested in purchasing the 70,000 to 75,000 shares (about 40% of the outstanding stock) of Groesbeck, the foundation and Groesbeck associates that were then being

offered for sale, and plaintiffs, as well as others, including National Container Corporation, inspected or caused to be inspected the company's plant. In late August or early September, 1953, National Container Corporation publicly offered to purchase substantially all, but not less than 55.6% of Monroe Company's outstanding stock at $10 per share and secured options on the Groesbeck and associates stock and proceeded to submit its proposal to stockholders. The National offer was conditioned upon acceptance by holders of at least 55.6% of the outstanding stock by September 21, 1953.

(10) The annual stockholders meeting of the company was set for September 23, 1953 but no action thereat in respect of the National Container offer was contemplated, noticed or required. Nevertheless, Raney, Knapp, Blum and Leathers decided that they would use their official positions as officers-directors and the funds, credits, facilities, services of employees, and corporate opportunities and opportunities coming to them by reason of their relationship to the company, and their relationship to its suppliers, customers and others having business dealings with it, to defeat acceptance by stockholders of the National Container offer and thereby enable said defendants Raney, Blum, Knapp, Leathers and Huber to accomplish their aforesaid plan, scheme and conspiracy. Their said decision and purpose was carried out in manner following:

(a) Having concluded that Moynihan would

be of no assistance to them in connection with their efforts to acquire Groesbeck stock or to prevent its sale to others than their group, Raney, Blum, Knapp and Leathers agreed that Moynihan should be replaced as a company director at the September 1953 annual stockholders meeting by defendant Sempliner who was seeking the assistance and cooperation of Raney, Blum, Knapp and Leathers in getting elected as such director.

(b) On August 25, 1953, Raney, without consulting the non-defendant directors, retained defendant Sempliner to represent the company as an attorney in a dispute with a union. On August 29, 1953, Moynihan being absent, Raney, Blum, Knapp and Leathers, as a majority of the company's directors, and against opposition, voted to employ Francis as attorney for the company. Both Francis and Sempliner knew that Raney, Blum, Knapp, Leathers, and Huber were endeavoring to purchase the or an interest in the Groesbeck stock and to prevent or delay the sale of such stock to others and that said four defendants had taken control of the company and of its affairs and were attempting to obtain control of a majority of the outstanding stock.

(c) In order to dissuade company office and other salaried employees from selling their stock in the event the Groesbeck stock was sold to others than

the Raney group or those friendly to or cooperating with them, and as an inducement to such employees to cooperate with the Raney group and to furnish funds for the acquisition of stock for the purposes of said plan, scheme and conspiracy, and despite the matter of pension was tabled by the company directors in June 1953, Raney, purporting to act on behalf of the company but without authorization or consideration by the board, on August 28, 1953 posted a written promise to the office and other salaried employees that, retroactive to September 15, 1953, they would receive whatever pension plan or salary increase that might thereafter be negotiated by the union for the nonsalaried employees.

(d) On September 1, 1953 Raney permitted his office secretary, a company employee, to purchase 57 shares of stock in the company offered for sale at $7.50 per share and caused the company to loan the funds therefor to the employee.

(e) Defendants, Raney, Blum, Knapp, Leathers and Huber, in order to prevent acceptance of the National Container offer by stockholders and in order to carry out the objectives of their plan, scheme and conspiracy, conferred and decided that a campaign should be waged against the National Container offer and to acquire, for the benefit of said defendants and others

friendly to or cooperating with them, control of a majority of the outstanding stock in Monroe Company, and that, to such ends and for such purposes, the company's name, the official positions of the defendant officers-directors, the funds, credits, facilities, services of employees and attorney of the company and its corporate opportunities and opportunities coming to the officer-directors in respect of purchases of stock in the company be used, all at the expense of the company and to its great detriment. Said decision was carried out and said campaign was conducted in manner and by means hereinafter set forth.

(f) Francis, knowing of the said decision, suggested that William J. Weipert and Victor H. Weipert, of the law firm of Weipert and Weipert (hereinafter sometimes referred to as Monroe attorneys) be employed as additional attorneys for the company to assist in said campaign and in the drafting of documents required to accomplish the purposes thereof. Said law firm was forthwith so employed by the company but without authorization of its board of directors, and from thenceforth the firm served in conducting said campaign and in the efforts to accomplish campaign objectives. Accordingly, on September 2, 3 and 4, 1953, defendants Raney, Blum and Knapp, at company expense and without authority of

its board of directors, caused to be published newspaper ads signed by the company, and by Knapp, president, Blum, secretary-treasurer, and Raney, vice-president and general manager, addressed to the company stockholders and stating that the management was in no way connected with the National Container offer.

(g) On August 25, 1953, in directors meeting, Raney, Knapp, Blum and Leathers had decided upon and approved, against opposition, a form of proxy to them to be solicited at company expense from stockholders for the September annual meeting. The proxy form was so sent to stockholders by Knapp, president, with request for execution and return. However, said defendants became concerned that the sale by stockholders of their stock would revoke any proxy given to said defendants as to the September meeting and made known to said Monroe attorneys their said concern and their desire to establish some means whereby, with substantial funds to be raised, they and those cooperating with them could purchase or control stock in the company sufficient to defeat the National Container offers and thereafter control a majority of the company's outstanding stock. Defendant Huber knew of and concurred in said decision and knew and concurred in the desire of said Raney, Blum, Knapp and Leathers and the enlistment of the assistance

of the Monroe attorneys for the aforesaid purposes. As a result: the Monroe State Savings Bank, in which Monroe Company for many years had been carrying non-interest bearing deposits averaging about $300,000 and of which bank said Monroe attorneys were attorneys, agreed to act as depositary for the funds to be raised and to make the purchases of stock therewith. Raney, Blum, Knapp and Leathers, desiring to conceal their connection with the arrangement, an escrow agreement was forthwith prepared by the Monroe attorneys between three company employees and the bank whereby funds to be deposited with the bank, ostensibly by the employees, would be used to purchase stock in the company at $10 per share. The said three employees were selected by Raney and the escrow agreement was executed and placed in operation on or about September 4, 1953, and Raney forthwith agreed, privately, to and did deposit with the bank, under the agreement, $15,000, and Leathers also agreed to and did deposit a like sum, and Blum agreed to and did deposit $5,000.

(h) It was also decided by Raney, Blum, Knapp and Leathers that a group friendly to them would be organized, nominally to act as a so-called stockholders committee in opposition to the National Container offer, and, simultaneously with the escrow arrangement, Huber

and the Monroe attorneys also created such a committee, of which Huber became an active member and one of the Monroe attorneys became chairman, and which committee particularly through Huber and the said attorney, at the expense of the Monroe Company, thereafter took an active part in publicly opposing the National Container offer and in procuring proxies to Raney, Blum, Knapp and Leathers for the September stockholders meeting.

(i) Raney, Blum, Knapp, Leathers and Huber knew that the $10 per share would be attractive to many of the stockholders and that the owners of a large number of shares would desire to get that amount therefor, and, consequently, a large fund would have to be raised in order to be able to acquire ownership or control of a majority of the outstanding stock; and they also knew that their own deposits and those which they would be able to procure from company employees would not be adequate for such purpose. Under such circumstances they decided to: (a) solicit from, and cause to be solicited from, company suppliers and customers and their brokers and agents, and from company employees whose employment was under the control of the Raney group, upwards of $100,000 intended to be deposited with the bank by the three employees, under the escrow arrangement, and (b) to utilize their

official position and offices in the company and at the company's expense, the funds, credits, facilities, services of employees and attorneys, for the company, for the active prosecution of their said plan, scheme and conspiracy and their opposition to the National Container offer and their efforts to obtain control of a majority of the outstanding stock in the company and to retain control of the company and its affairs at and after the September meeting.

(k) In carrying out their decision referred to in division (j), ante, Raney, Blum, Knapp and Leathers, as was well known to Huber, Francis, the Monroe attorneys and to defendant Sempliner, directed to be used and did use the funds, credits, facilities and services of the company employees to a very great extent and at the company's expense and to its great financial and operational detriment, in assisting Raney, Blum, Knapp, Leathers and Huber in opposing the National Container offer, in the procurement of the said proxies for the September meeting, in the efforts of the so-called stockholders committee, and in soliciting deposits of money under the escrow arrangement by the company employees and by company suppliers, customers and others having business relations with it. As a result of the efforts of said Raney, Blum, Knapp, Leathers,

Huber, said attorneys and company employees, a total of $162,000 was deposited under the escrow arrangement and 15,538 shares of stock in the company were purchased therewith, proxies to Raney, Blum, Knapp and Leathers covering the shares so purchased and shares of other stockholders who with Raney, Blum, Knapp, Leathers, Huber, Francis and Sempliner and his mother held or controlled a majority of stock in the company, were obtained and the National Container offer, on September 21, 1953, failed of the required acceptance. Among the items paid by the company were: the cost of preparation and publication of various ads by the company and of the so-called stockholders committee, mailings, postage, telephone calls, telegrams, and services of Francis and the Monroe attorneys in connection therewith and the cost of celebrating the resultant victory; which items were paid on Raney's direction with the knowledge and approval of Blum, Knapp, Leathers, Francis, the Monroe attorneys, and Sempliner who, instead of Moynihan, was elected director at the September 23rd meeting.

(l) It was realized by Raney, Blum, Knapp, Leathers and Huber and the attorney advisors that, in order to obtain and retain control of the company and its affairs, it would be necessary to retain control of

the stock purchased under the escrow arrangement, and there had been previous discussions by Raney and Huber as to the creation of a voting trust for control of a majority of the company stock. Some of those who made deposits under the voting trust had been advised by Raney or others of his group that some sort of a trust would be created relating to the stock.

11. The interest of Waterbury Co. in purchasing stock in Monroe Company ceased when the National Container offer was made and was open. On or about October 1, 1953, and after renewed negotiations, plaintiff Waterbury Co. purchased, through a broker, from the representatives of the Groesbeck estate and former Groesbeck associates and others who desired to sell, and became the owner of, approximately 75,000 shares of the common stock of Monroe Company at a price of $10 per share. To secure a loan made to said Waterbury Co. by the Waterbury National Bank of Waterbury, Connecticut, and participated in by the Chase National Bank of New York, New York, for the purpose of partly paying for said stock, all of said shares so purchased were placed in the name of the banks' nominee, Bender & Co., a copartnership consisting of members all of whom are citizens of states other than Michigan. Said shares so purchased were presented to the Monroe Company for transfer on October 9, 1953 and were issued to said Bender & Co., October 21, 1953. On January 20, 1954, 4,000 of said shares were transferred to, and placed in the name of, plaintiff Lawrence G. Kunkel as to which he executed a stock-power in blank. At the time of

instituting plaintiffs' action herein all of said stock so purchased was held as security for said bank loan but subject to being placed in the name of Waterbury Co. upon its request. Since then said stock has been issued to and is now held by Waterbury Co. as to 71031-1/8 shares and said Kunkel as to said 4,000 shares.

12. On October 13, 1953, plaintiff John P. Kinsey became, and is, the owner and holder of 50 shares of the common stock in the Monroe Company. Said John P. Kinsey and said Lawrence G. Kunkel are, respectively, President and Vice-President of Waterbury Co. On October 13, 1953, director Grant resigned and was replaced by John P. Kinsey as such director.

13. Waterbury Co. at the time of the commencement of this suit was, and at present is, engaged in the conversion of kraft paper into corrugated paper boxes which conversion process is similar to that portion of the business of Monroe Company wherein jute paper is converted into corrugated paper boxes. Waterbury Co. is engaged in said business only in the non-competitive eastern area. Waterbury Co. does not manufacture paper. Plaintiffs purchased said stock in Monroe Company as an investment, without knowledge of the wrongful plan or scheme of defendants alleged herein and because plaintiffs felt that the Monroe Company was conservatively managed and had potentialities for increased and more profitable production, especially if more modern means and methods were employed in its operations and its business contacts were increased. Plaintiffs have not endeavored to impose their views, ideas or wishes as to how or by whom Monroe Company should be operated or

its business conducted. Plaintiffs' interests in proper and efficient operation of the Monroe Company are no different than those of the other stockholders thereof who are interested in the company's welfare and at all times plaintiffs have cooperated with the officers, directors and management of said company to that end and on that basis.

14. Upon the purchase of stock by plaintiffs and for the purpose of nevertheless attaining the objectives of said plan, scheme and conspiracy, the defendants, Raney, Blum, Knapp, Leathers, Sempliner and Huber conspired and agreed to create an arrangement whereby Raney, Blum, Knapp, Leathers and Sempliner would be able to continue their control of the business and affairs of the Monroe Company and of a majority of its outstanding stock for the purpose of depressing the value of the stock purchased by plaintiffs and of coercing plaintiffs to purchase the majority stock from said defendants in a block and at an arbitrarily high price fixed by said defendants, in order to rid the company and its stockholders of said defendants' control thereover in the event their control was against the best interests of, and detrimental to, the company and its stockholders generally. To such ends said defendant officers-directors and Huber further conspired and agreed:

(a) That they would attempt to create a so-called voting trust agreement as to a majority of the outstanding stock in the company as to which said directors, or those to be selected by them, would be the sole trustees and the Monroe State Savings Bank would be the depositary and whereby for a period of five years the voting rights of such majority of

stock would be the trustees and no sale of less than all stock subject to said agreement could be made and sale only of all said stock could be made only by the trustees and at an unwarrantedly high price.

(b) That a friendly so-called stockholders committee be created to solicit deposits of stock under the voting trust agreement.

(c) That the official positions of said defendants and their relations to company suppliers, customers and others having business dealings with the company and with said defendants in their official capacities (including those who had put up funds under the escrow arrangement and who had not yet received the stock purchased thereunder with their funds), and the company's funds, credit, facilities and services of its employees and attorneys - be actively and aggressively used for the purpose of obtaining deposit of the majority of stock necessary to make said trust effective.

15. Accordingly, and for the aforesaid purposes, the following acts were progressively committed:

(a) On October 13, 1953 defendants Raney, Blum, Knapp, Leathers and Sempliner, as company directors, without disclosure of the escrow stock purchases to the other directors and despite a 50% increase in the regular dividend paid September 15, 1953, passed a large unprecedented extra dividend equal to the total 1952 dividends, but, however,

withheld payment thereof until January 15, 1954 in order, as plaintiffs believe, to allow themselves time to deliver the escrow stock to the depositors, including those friendly to them, and to prevent other stockholders from selling their stock until defendants could perfect their plan to secure control thereof.

(b) On or about October 28, 1953 Raney directed or authorized the distribution of the stock purchased under the escrow arrangement to all escrow depositors except the supplier who had deposited the largest amount under the escrow arrangement. On or about November 18, 1953 Raney deposited an additional $1,000, and Huber was permitted to deposit $4,000, under the previous escrow arrangement and thereupon distribution to them and said supplier was made.

(c) In November and December, 1953 and January 1954, Raney, Blum, Knapp, Leathers and Sempliner, with the knowledge of Francis and with the knowledge and active cooperation of Huber and with the aid of said Monroe attorneys, formed among the defendant officers-directors and friendly and cooperating company employees, a so-called stockholders voting trust committee with Huber as chairman, for the purpose of actively soliciting deposits of stock, other than that of plaintiffs and the nondefendant directors, under a voting trust agreement drafted by said Monroe attorneys.

(d) Raney, Blum, Knapp, Leathers and Sempliner

decided, with Huber's approval, that said five company directors should be the sole trustees under the voting trust agreement and that in connection with the solicitation of deposits thereunder it should be made to appear that the management of the defendant officers-directors was and would be productive of great profit to Monroe Company and that Waterbury Co. was apt to offer, for additional stock, much less than the stock was worth and that if Waterbury Co. acquired a majority of stock great damage would result to the other stockholders, and that an appraisal of the company assets established a value of $15 per share for stock in the company, and that dividends at a recently increased rate would be continued. Exhibit 1 hereto attached is a true copy of the voting trust agreement so drafted. Dated as of December 31, 1953 it was entered into by the defendant trustees and the depositary bank, between January 1st and 7th, 1954. Said agreement, if made effective, not only would give to the defendant trustees majority control of the company's board of directors and of the offices in, and the affairs, of the company, but would also limit the sale of the stock deposited under the agreement to the sole discretion of said defendants and then only by them and en bloc at a price of upwards of $1,390,000 ($15 per share), which price was unrealistic, unwarrantedly high and far beyond the fair and reasonable value of the stock, and would also give said defendants, as individuals, the right to purchase said stock for themselves as trustees and would

absolve them from all disability to contract with the company.

(e) In the planned effort to obtain the deposit of shares under said agreement defendants approved of the issuance of a letter dated December 31, 1953, from said Huber to the stockholders of the Monroe Company in the form of the photostatic copy hereto attached as Exhibit 2 which letter and agreement and in some cases, a list of "STOCKHOLDERS WHO HAVE SIGNED THE TRUST AGREEMENT, PREVIOUS TO THE TIME OF STARTING THE AGREEMENT SIGN-UP CAMPAIGN" (in the form of the photostatic copy hereto attached as Exhibit 3*, and which list knowingly and falsely represented that 41,114-1/8 shares of stock owned by defendants, and company employes, suppliers, customers, and their brokers and agents - with emphasis upon the director status of five defendants - had been subjected to the trust agreement) were mailed on or about January 7, 1954 to all or most of the holders of Monroe Company stock, including those residing in other states, other than plaintiffs and said Feinberg and Krave, and which letter, agreement and list only came to plaintiffs' knowledge long thereafter. In said letter of December 31, 1953 and in other solicitations in connection with the voting trust, the existence and results of the escrow arrangement were deliberately and fraudulently withheld from the stockholders who were solicited. The appraisal mentioned in said letter was that ordered by Raney and the appraisal figures were procured and resorted and

referred to for the purpose of inducing deposit of stock under said agreement. The trust agreement and said letter were prepared by one of the Monroe attorneys without arrangement as to fees, but after the commencement of plaintiffs' action, he was paid $3,000 by defendant Raney pursuant to a back-dated bill to the "Stockholders Committee." Other attorney fees and expenses incurred in the preparation, printing and mailing of said letter were also improperly incurred by, or upon the credit of Monroe Company.

(f) With the knowledge and approval of the defendant officers and directors and of Huber, Francis and the Monroe attorneys who drafted the voting trust agreement:

> During November and December, 1953 and January, 1954, the voting trust committee used the Company's office and its facilities for holding the committee's meetings and during the same period and into April 1954, the said defendants extensively used the services of the employees, telephones, clerical staff, postage and stationery, of the company, and the names and official positions of said defendants as Company officers and directors, to solicit and induce other stockholders (except as aforesaid) to subject their stock to the voting trust agreement.

(g) Up to the time of filing of plaintiffs' complaint herein on February 2, 1954, only 37,411 shares (about 20% of the outstanding stock in the company) had been deposited under the voting trust agreement and none of said shares nor of those thereafter deposited (which together constituted a majority of the outstanding stock) has been transferred to the voting trustees

on the books of Monroe Company or new certificates issued therefor, although numerous certificates of deposit have been issued and delivered for the deposited stock.

16. The voting trust certificates issued and to be issued under the voting trust agreement were not registered with the Securities and Exchange Commission under Securities Act of 1933 [15 USC § 77e(a)(1)(2)] or otherwise. The trustees and the depositary agent under the agreement repeatedly used and caused to be used means and instruments of transportation and communication in interstate commerce and the mails to carry and transmit the Huber December 31st letter and subsequent and other related correspondence and telegrams, and carried and caused to be carried, through the mails and in interstate commerce numerous certificates of stock deposited, and the voting trust certificates issued, under the voting trust agreement.

17. The voting trust certificates issued and to be issued under the voting trust agreement have not been accepted for filing, nor has any license to deal therein been issued under the so-called Michigan Blue Sky Law[§§ 451.101-451.133 C. L. Mich. 1948; §§ 19.741-19.743MSA].

18. Summons and the original complaint herein were served on the defendants on February 3, 1954 and within a few days thereafter a representative of the Securities and Exchange Commission interviewed the Monroe attorneys who drafted the voting trust agreement and informed said attorneys of the representative's view that the issuance of the voting trust certificates violated the Securities Act of 1933. Said Francis was informed of the interview and the view so expressed, and, without board

authority, was thereupon retained by Raney, purportedly as attorney for the Company, in respect of plaintiffs' action and for the purposes of upholding the validity of the voting trust and defeating plaintiffs' claims, derivatively and personally. From thenceforth funds of the Company have been used to pay for the services so rendered by Francis; directors Raney, Blum, Knapp, Leathers and Sempliner having, at directors meeting on February 24, 1954 approved such retainer, against the opposition of the non-defendant directors.

19. Defendants' opposition to plaintiffs' action herein, and particularly as to the discovery of defendants' conduct sought in plaintiffs' complaint, has been headed by said Francis. He, and the Monroe attorneys who drafted the voting trust agreement and defendant Sempliner have been respectively paid large sums of money by the company for alleged services rendered by them purportedly as company attorneys, but plaintiffs believe and therefore allege, that all or a great part of said services were rendered for the benefit of the individual defendants and not for the benefit of the company and were rendered in connection with the opposition to the National Container offer, the efforts of defendants Raney, Blum, Knapp and Leathers to procure proxies to themselves, and to the escrow arrangement and the voting trust.

20. Continuously since Groesbeck's death, Blum, Knapp and Leathers, and also Sempliner since his election as a director, have permitted Raney practically to run and control the Monroe Company and its operation and affairs, without authority and without proper supervision and direction, and all of said directors have repeatedly ignored the

nondefendant directors.

Despite declining business and sales caused or accentuated, as plaintiffs believe, by the extensive use of the company's sales department to solicit in connection with the said escrow and voting trust arrangements, defendants have permitted Raney to convert a large and unreasonable part of the company's cash into huge, excessive, unwarranted and costly inventories consisting, to a concealed extent, of waste materials purchased at excessive and unwarranted prices and in unwarranted and unreasonable amounts from one of the company's suppliers which had furnished the largest amounts of funds under the escrow arrangement. Said inventories, at the time of the filing of plaintiffs' original complaint herein, were more than two times those of a year previously, and thereafter greatly increased by continued excessive purchases from said supplier and became greatly and progressively deteriorated, thereby producing inferior and less salable end-products, and greatly increasing the company's cost of production. Excessive purchases of such materials, at excessive prices, and with the aforesaid results have continued - all to the great financial loss and detriment to Monroe Company and its stockholders generally.

21(a) The pension promised the office and salaried employees on August 28, 1953, referred to in paragraph 10, ante, was not authorized by the board of directors and the promise and announcement thereof were unknown to the nondefendant directors until it was disclosed at a meeting of the board on January 27, 1954. In the meantime the announcement remained posted and the campaigns as to the National Container offer, for

proxies, and for funds to purchase stock under the escrow arrangement had been actively conducted and the solicitation of deposits under the voting trust agreement was being intensively conducted in manner described in paragraph 15(c), ante. At the January 27, 1954 board meeting Raney stated that it was the company's policy to give its nonunion employees comparable salary and other benefits when granted to union company employees and told the board that he had done so.

(b). Although the board of directors, at the meeting, took no action on or respecting any pension proposal and merely postponed consideration until the next meeting for presentation of breakdown of cost, Raney, with the approval of the other defendant directors and in order unfairly to create prejudice in the minds of the office and salaried employees and to secure their continued cooperation in connection with the voting trust, posted a written notice on January 29, 1954, referring to Raney's promise of August 28, 1953 to the office and salaried employees and advising that at the January 27, 1954 meeting the promise was not approved by the board of directors and was cancelled - to be taken up later.

(c). At the meeting on February 25, 1954, the board of directors approved salary increases and a pension plan for the company's union employees, retroactive to September 15, 1953. The plan had been formulated and negotiated by a pension counselor who, without board authority and without knowledge of the nondefendant directors, had since June 1953, been employed by Raney at Company expense to negotiate a pension plan as to the union employees and who, at Raney's request, had given Raney $5,000 for deposit under the aforesaid escrow arrangement

and who thereby acquired 500 shares of stock in the company which had been deposited under the voting trust agreement. Subject to Raney's control, annually, the counselor, whom Raney designated the insurance agent under the plan, would be entitled to $15,000 commissions on the insurance involved therein. Said consultant, also at Raney's request and unknown to the nondefendant directors, on August 24, 1953 furnished Raney with proposals of pensions for Raney, Blum and other company nonunion employees. At and after the February 25, 1954 meeting Raney, Blum and Sempliner, aided by the counselor, continued to press the company's board of directors to authorize a pension plan for the company's salaried and administrative employees, and at said meeting Sempliner stated that it was the company's policy to grant salary increases to its nonunion employees coincident with the granting of such increases to union company employees, whereupon salary increases for the nonunion employees were approved and the matter of pensions for the salaried and administrative employees was tabled.

(d). At board meeting on April 8, 1954 the posting, by Raney, of the August 28, 1953 promise of pension to the office and salaried employees without authority was questioned. Raney again stated that it had been the company's policy for years to give the administrative employees the same benefits given to union company employees, whereupon directors Kinsey and Sempliner were appointed to consult with the pension counsel or report back to the board.

(e). From January 27, 1954 until May 27, 1954 Raney and Sempliner represented to the nondefendant directors that Raney and Blum

were not to be included in a pension plan for the salaried and administrative employees. The pension matter was considered by the board on May 27, 1954 at which time Raney announced that he and Blum were to be included in any pension plan for the salaried and administrative employees. Upon inquiry as to the cost to the company, the agent pension counselor represented to the board that such cost would be $18,000 per year if pensions for Raney and Blum were not provided, or $22,000 per year if pensions for them were provided. In view of the said promises made by Raney, and believing that the proposed plan would merely extend to the nonunion employees benefits parallel to those extended to the union employees and would require that said employees continue in the service of the company and contribute 25% of the premiums for the benefits until the cost thereof was fully paid, and that Raney and Blum, on the same basis, could be included at the expense to the company of an additional $4,000 per year, the nondefendant directors joined with the other directors in adopting the following resolution proposed by defendant Sempliner:

> "RESOLVED, that a pension plan for salaried and administrative employees, which plan shall be retroactive to employees eligible September 15, 1953, be instituted and paralleled in maximum rate of benefits to the pension plan adopted September 15, 1953, for hourly employees and the officers of the Company be and they are hereby given authority to sign the necessary papers for benefits applicable only to the first $18,000.00 of salaries."

(f). Effective June 15, 1954 and dated June 29, 1954, a trust agreement evidencing a plan for 18 salaried employees (including Raney and Blum and at least 7 others who had been active with the Raney group in the National Container, proxy, escrow and voting trust campaigns) was

entered into with Raney's secretary, as trustee, and for the company, by Knapp, president and Blum, secretary. Among the pensions which it provided were pensions of $450 per month for Raney and $200 per month for Blum, and $200 per month for Raney's secretary. The annual premium payable for the Raney pension was to be approximately $5,700 of which his contribution was to be approximately $1,400 per year up to the date of his retirement and no longer. The corresponding figures as to Blum's pension were $2,600 and $650. The agreement provided that the employees covered could retire at age 65 and receive full pension without making any further contribution, and likewise if discharged after age 65. The agreement further provided that the estate or beneficiary of an employee who died prior to retirement would receive both the amounts contributed by the employee and the company, or the cash surrender value of the pension insurance purchased whichever was greater. Raney, at the time, was within three months of the retirement age of 65 and Blum was within one year thereof. Provided Raney and Blum did not retire or were not discharged before having contributed their full share of the premiums, the net annual cost to the company under the plan would be $25,353.62. Subject to Raney's control, annually, the pension counselor would be entitled to an additional $15,586.83 commissions on the insurance under the plan and the trustee became entitled to compensation as such from the company. The document was not submitted or made available to the nondefendant directors.

(g). Also effective as of June 15, 1954 and dated June 29, 1954, Knapp, president, and Blum, secretary, entered into a written agreement

for the company obligating the company to pay 10 annual premiums of $5,732.48 per year for Raney's and Blum's pensions, even though they retired or were discharged after reaching 65 and their contributions toward the premiums thereupon ceased; the insurer to have the right to recompute the premiums from a 10-year annual base to a single premium base (amounting to $49,500 as to Raney's pension if he retired September 1955). This obligation was withheld as a liability from the company's records. This agreement was not exhibited or made available to the nondefendant directors and they were uninformed thereof. No phase of the pension matter was submitted to the company stockholders.

A saving of $2,300 could have been made had the first year's premium on the pensions for the salaried and administrative employees been fully paid in the company's fiscal year ending June 30, 1954, as the counselor advised Raney. Nevertheless, at Raney's direction, only a half year's premium was paid which made it possible for Raney to retire before the last half of the premium was due.

(h). In at least the following respects the pension agreements of June 15, 1954 as to the salaried and administrative employees did not comply with the company's policies as represented by Raney and Sempliner, nor with the intent of the nondefendant directors to extend to the nonunion employees benefits parallel to those extended to the union employees, and did not comply with the resolution of June 15, 1954, ante, nor the intent and purpose thereof, and were unauthorized by the board of directors:

(1). Under the union company employees plan (hereinafter referred to as "union plan") the company could,

upon thirty days notice to the insurer, cease to pay premiums and was thereafter not required to continue to pay them. The company's contract in respect to the union company employees pension extended only to September 1956. Under the plan for the salaried and administrative employees the company could only cease to pay premiums because of business necessity, legal dissolution or upon being legally declared bankrupt and under the supplemental agreement its obligation to pay the premiums was absolute.

(2) Under the union plan the beneficiary or estate of an employee who died prior to retirement would receive only the contributions which had been paid by the employees, with interest. Under the plan for the salaried and administrative employees the beneficiary or estate would receive both the contributions which had been paid by the employee plus those (three times as large) which had been paid by the company or cash surrender value of the pension insurance purchased, whichever was greater.

(3) Under the union plan the size of the retirement annuity to which the employee would be entitled was dependent upon the amount of his earnings on September 15, 1945, September 14, 1953 and upon his annual earnings thereafter. Under the plan for the salaried and administrative employees the size of the retirement annuity was dependent solely upon the earnings on June 15, 1954 and could not, as

to Raney and Blum, be thereafter decreased.

(4) Under the union plan the retirement annuity to which the employee would be entitled was solely for life without guarantee or minimum payment except for return of the contributions paid by the employee with interest. Under the plan for the salaried and administrative employees the employee became entitled to an annuity for life but with guaranteed payments for the minimum of one hundred twenty months.

(i). The plan for the salaried and administrative employees, at least as to Raney and Blum and company employees who had been active and cooperated with the Raney group, in the aforesaid campaigns was unreasonably beneficial to them and at unreasonable and excessive cost to the company, and the pensions to Raney, Blum and said employees were not merited. Under the circumstances the pension arrangement as to Raney, Blum and said employees was and is improper and unfair to the company and was accomplished by concealment from the nondefendant directors of the facts, terms and company cost of the pension benefits.

(j). Plaintiffs believe, and therefore allege, that defendants Raney, Blum, Knapp, Leathers and Sempliner were informed of the true facts, terms, and cost to the company, as to the prior plan for the salaried and administrative employees and did not inform the nondefendant directors thereof, contrary to their duties to the nondefendant directors, the company and its stockholders.

(k). Under the circumstances, the pension plan for the

salaried and administrative employees as evidenced by the aforesaid agreements, was not authorized or approved by the company's board of directors.

22. Said defendant officers and directors withheld from the nondefendant directors copies of minutes of meeting of stockholders and directors of the company subsequent to the death of Groesbeck up to October 13, 1953 and concealed from plaintiffs, during the discovery proceedings and into the period of the first trial herein, the existence and contents of the book-records of the company reflecting the excessive and unwarranted purchases of materials made by Raney from the supplier who put up the largest amount under the escrow arrangement.

23. As a result of the great amount of time and effort devoted to said plan, scheme and conspiracy by the defendant officers-directors, and their misuse of the company's funds, credit, facilities and services of its employees, the company's business was neglected by the defendant officers-directors and greatly decreased, and as a result of such misuse and the improper purchases of materials at unwarrantedly high prices and deterioration due to overstocking and the burdening of the company with unnecessary and unwarranted attorney fees, the company has sustained, and has continued to sustain, great financial and business loss and damage and by reason thereof has ceased making a profit and has incurred and is still incurring a large loss.

24. The aforementioned acts and conduct of the defendant officers and directors of the Monroe Company, and the purposes of such acts and conduct and the means whereby they were sought to be, and were,

accomplished, violated the fiduciary duties and obligations of said defendants to the company, its stockholders and the nondefendant directors.

25. The voting trust agreement, as to the company, its stockholders and nondefendant directors, was and is improper and unlawful, because:

(a) Entered into by Raney, Blum, Knapp, Leathers and Sempliner intentionally for an unlawful purpose and by unlawful means.

(b) The position which Raney, Blum, Knapp, Leathers and Sempliner assumed by becoming the trustees under the voting trust was, has been and will continue to be in conflict with their official and fiduciary positions as company officers and directors and with their duties and obligations as such.

(c) The voting trust certificates issued and to be issued under said voting trust agreement have not been registered under the Securities Act of 1933 (15 U.S.C., §§ 77a-77aa) and no registration statement thereunder has been or is in effect, and consequently sale and delivery of said certificates was and is unlawful.

(d) Said Huber letter dated December 31, 1953, did not, as a "prospectus," meet the requirements of said Securities Act (15 U.S.C., §§ 77g, 77j, and 77q), and the transmission and use of said letter was and is contrary thereto and unlawful.

(e) The said Huber letter and the list enclosed with it were fraudulent and contained and constituted misrepresentation that the listed stockholders had already signed the voting trust agreement and had subjected their shares thereto, whereas they had not. They did not disclose, but purposefully concealed, the purchases of the 15,538 shares at $10 per share by Raney, Blum, Leathers, company employees and suppliers and others through the escrow arrangement and the intent that such shares be deposited under the voting trust agreement nor that a majority of those listed as signers had made substantial purchases through the escrow. Said letter falsely represented that the National Container offer had been defeated by the rallying of the stockholders, but did not disclose that this had been accomplished largely by acquisition of stock through the escrow. Said letter misrepresented that the voting trustees would have the power to sell only on the same basis applicable to other depositing stockholders, whereas the trust agreement gave the trustees the right to join in a syndicate for the purchase of the deposited stock and thereby remain stockholders or the beneficial owners of the stock so purchased. Said letter misrepresented the value of the company's assets and concealed the fact that the appraisal was only an insurance appraisal for insurance purposes and did not represent fair market value or cost less depreciation.

(f) The voting trustees transmitted, or caused

to be transmitted, the said Huber letter and list to stockholders in Michigan and in other states by use and by means of the mails and other means and instruments of transportation and communication in interstate commerce, in violation of 15 U.S.C. § 77q, and 18 U.S.C. § 1341, and 15 U.S.C., §§ 77a-77aa.

(g) The voting trust certificates issued and to be issued under said voting trust agreement were not, and have not been, accepted for filing, nor has any license to deal therein been issued, under the so-called Michigan Blue Sky Law, §§ 451.101-451.133 C.L. Mich. 1948; §§ 19:741-19:773, MSA.

(h) Said voting trust agreement is a restraint of interstate trade and commerce, and a monopoly and an attempt to monopolize trade and commerce, prohibited by the Sherman Anti-Trust Act (15 U.S.C., §§ 1-7) and the Clayton Act (15 U.S.C., §§ 1-27).

(i) Said voting trust agreement is a combination and trust to restrict trade and commerce, and increases and fixes the price of merchandise and prevents competition in the sale and purchase thereof, and is an agreement not to sell merchandise below a fixed price and to settle said price, and to preclude competition, all contrary to §§ 445.701-445.713, C.L. Mich. 1948; § 28:31-28:40 MSA.

(j) Said voting trust agreement is an unlawful restraint on alienation of property contrary to the laws and

public policy of the State of Michigan.

26. The defendant officers and directors and Huber continued to carry out said conspiracy after plaintiffs' action herein was commenced, and in so doing and to that end -

(a) In February, 1954 and following months, in order to stall action by the Securities and Exchange Commission and by the Court herein, said defendant promised and assured the Commission that they, said defendants, intended to and would file a registration statement as to the voting trust agreement and would offer the depositing stockholders an opportunity to obtain a return of their deposited stock, thus inducing the Commission not to seek injunction against continued and further violation of the Securities Act. On February 18 and 23, 1954 said defendants agreed in open court that the status quo would be maintained and no new voting trust certificates would be issued. However, the defendant voting trustees continued to receive deposits of stock under the voting trust agreement and to issue and deliver voting trust certificates therefor, all by use of the mails and by means of transportation and communication in interstate commerce. After having thereby received deposit of a majority of the outstanding stock of the Monroe Company and having lulled the Commission and the Court into inaction, said defendants declined to file the registration statement and to offer the rescission to the depositors, and to the present time have failed so to do.

(b) Induced one of the suppliers of the Monroe Company who had previously deposited the largest amount under the escrow arrangement and purchased a large amount of stock thereunder, to make available upwards of $40,000 in March and April, 1954 to purchase stock in said company and voting trust certificates issued under the voting trust agreement, in order to forestall any possible sale thereof to plaintiffs or others sympathetic with plaintiffs' efforts to prevent consummation of the voting trust agreement and to prevent rescissions and demands for return of stock for which voting trust certificates were issued, and in order that the stock covered by the voting trust certificates, and other stock so purchased, would be available for redeposit or additional deposit under said voting trust agreement after belated filing of a registration statement complying with the Securities Act; a large amount of such stock and certificates having thus been purchased with said funds so supplied and said defendants having, by reason thereof, further become obligated to said supplier and, as a result thereof, the defendant officers-directors permitted continued excessive purchases of materials from said supplier at unwarrantedly excessive prices, to the detriment of the company. Said arrangements and purchases were concealed by said defendant from the stockholders, voting trust depositors and the Commission.

27. In the efforts of the voting trustees to prevent or delay

action by the Securities and Exchange Commission, and by the Court herein, respecting the voting trust and to thwart plaintiffs from obtaining relief in their action, the services of said Francis, at expense of the Monroe Company, and the services of the defendant officers and directors, were devoted to various conferences in Monroe, Detroit and Washington, and to the neglect of the company's business and to its loss and damage.

28(a). Insofar as plaintiffs herein bring this action to enforce any derivative rights as stockholders of Monroe Paper Products Company, plaintiffs respectively allege that: (1) They were shareholders at the time of the transactions and acts of which they complain, other than those prior to October 1, 1953 as to plaintiffs Waterbury Co., October 12, 1953 as to plaintiff Kinsey and prior to January 24, 1954 as to plaintiff Kunkel, each of which prior acts were but parts of continuing wrongs which were finally consummated after plaintiffs became shareholders, (2) this action is not a collusive one to confer upon a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction, and (3) plaintiffs have not sought to secure from the managing directors relief or action which plaintiffs seek herein because: said five directors and officers, as a majority of the board of directors, are in control of said company; their conduct in respect to the matters complained of has been despite the opposition of the nondefendant directors to the extent that they received knowledge of the same; their conduct in respect to the escrow and voting trust agreements was and is ultra vires and contrary to their fiduciary duties; their efforts to prevent the sale of stock in the company, to divert stock purchase opportunities from the company to themselves and

to employees, customers, suppliers, brokers and agents friendly to them and their misuse of corporate positions, funds and facilities to effect these diversions and to induce deposit of stock under said voting trust agreement were and are continuing wrongs and parts of a wrongful plan or scheme which they are still seeking to consummate and, under the circumstances, all efforts of plaintiff to seek relief through the company directors would have been and would be futile.

(b) Plaintiffs did not seek from shareholders the relief or action desired herein because at the time of the filing of plaintiffs' original complaint herein the shareholders were widely scattered in Michigan and other states and some of them, the number and identity of whom were then unknown to plaintiffs, had deposited their stock under the voting trust agreement and the delay in convening a stockholders meeting would have enabled said five directors to procure further deposits of stock under the voting trust agreement, and further because the conduct of the five directors in respect of the voting trust was ultra vires, contrary to law and void. Plaintiffs have not subsequently sought such relief or action from stockholders because of the deposit of a majority of the stock under the voting trust agreement.

29. The amount and value of the matter in controversy herein derivatively and also individually exceeds the sum of $3,000 exclusive of interest and costs, and unless the relief prayed for herein is granted, said Monroe Company, its stockholders, and plaintiffs derivatively and individually will sustain great and irreparable loss and damage.

WHEREFORE, plaintiffs pray judgment:

I.

Requiring that defendants Knapp, Blum, Leathers, Raney and Sempliner, as directors of Monroe Paper Products Company, and said Knapp, Blum and Raney, as its officers, disclose:

(a) All acts and doings by them since June 1, 1953, individually and otherwise, or in which the name, letterhead, funds or facilities of Monroe Paper Products Company were used, in respect to:

1. All efforts to in any way affect the purchase or sale of stock of Monroe Paper Products Company.

2. The inception, drafting, consummation, solicitation and closing, and the deposit of funds or stock under, the escrow agreement with Monroe State Savings Bank.

3. All funds and facilities of Monroe Paper Products Company and services of its employees, officers, directors and agents used to prevent sale of stock to National Container Corporation and all thereof used in connection with said escrow agreement.

4. The inception, drafting and consummation of the voting trust agreement and letter dated December 31, 1953, and the solicitation of deposits of stock under said agreement.

5. All funds and facilities of the Monroe Paper Products Company and services of its attorneys, employees, officers, directors and agents used in connection with said

voting trust agreement, letter and solicitation, what stock has been deposited under said agreement and what commitments have been made for the further use of said funds or facilities and for services of its attorneys, employees, officers, directors and agents, and as to dealings and conferences had with the Securities and Exchange Commission in respect of said voting trust and certificates of deposit issued thereunder.

(b) The contents and details of said appraisal referred to in said letter dated December 31, 1953, and what and when authorization was given for the making of said appraisal and for what amount and by whom the company became obligated to pay therefor.

(c) The contents of the minutes of all stockholders' and directors' meetings from March 10, 1953 to October 10, 1953.

(d) The contents and details of the pension plan as to the company's office and salaried employees, and of the cost and expense thereof to the company, past and future.

(e) All purchases from, sales to, and contracts, commitments or arrangements with, all parties or contributors to said escrow and voting trust agreements and the purchases and sales made from the funds supplied by the supplier referred to in paragraph 26, ante.

II.

Declaring that:

(a) All purchases, since July 1, 1953, of stock in the company made by the defendants and by the company employees who were cooperating with or assisting the defendants in respect of the matters

herein complained of, and all purchases made under the escrow arrangement and those made with the funds referred to in division (b) of paragraph 26, ante, were unlawful and in violation of and in conflict with the fiduciary duties of the defendant officers and directors.

(b) The voting trust agreement and letter dated as of December 31, 1953 and their uses were unlawful, contrary to the, and each of the, statutes and public policy referred to in paragraph 25, ante, and in violation of, and in conflict with, the fiduciary duties of directors and officers Raney, Blum, Knapp, Leathers and Sempliner and were for their personal benefit and purpose.

(c) The trust agreement and supplemental agreement dated June 29, 1954 as to pensions for the salaried and administrative employees were and are, as to the company, unauthorized, unfair, unreasonable, and improper, and the result of violations of the fiduciary duties of the defendant officers and directors, and were procured by misrepresentations and for an improper purpose.

III.

Temporarily and permanently restraining and enjoining:

(a) Defendants Knapp, Raney, Blum, Leathers and Sempliner, as trustees under said trust agreement and otherwise, and said George J. Huber, individually and as chairman, from carrying out said voting trust agreement, soliciting deposit of stock thereunder and from voting any of the deposited stock and requiring that they direct the depository under said agreement to cancel all deposits thereunder, recall all certificates issued to depositors and to return the stock deposited by them.

(b) Defendant Monroe Paper Products Company and its directors and officers from recognizing said agreement or transferring any stock to the voting trustees or depository named therein or any nominee thereof; or from permitting them, or any of them, to vote any of said deposited stock.

(c) Defendant officers and directors and Monroe Paper Products Company from expending any funds of said company in connection with the preparation, use, and operation of the voting trust agreement and/or in solicitation of deposits of stock thereunder.

(d) Monroe Paper Products Company and its officers and directors from expending any funds of the company for, and from carrying out, the said agreements dated June 29, 1954 relative to pensions for the salaried and administrative employees, and, in any event in respect of the pensions for defendants Raney and Blum, and requiring them to withdraw from said pension plan or to consent to modifications thereof deemed by the Court herein to be fair, equitable and proper under the circumstances.

(e) Monroe Paper Products Company from expending its funds in the defense of, or for the benefit of, individual defendants herein, and from expending its funds in opposing the derivative phases of plaintiffs' action herein.

IV.

Charing and holding said defendant officers and directors liable to Monroe Paper Products Company for all expenditures of, and commitments for, funds of the company in payment of legal fees and other

expenses incurred for the benefit of said officers and directors in the defense of or in connection with plaintiffs' action.

V.

Removing said Knapp, Blum and Raney from office as directors and officers of the Monroe Paper Products Company and said Leathers and Sempliner from office as directors of said company.

VI.

Requiring said Raney, Knapp, Blum, Leathers, Sempliner and Huber to account to the Monroe Paper Products Company for, and to pay to it, the amount of all loss, damage and expense sustained by it or resulting from all violations of the fiduciary duties of said Raney, Knapp, Blum, Leathers and Sempliner to said company and to its other directors and stockholders in connection with the matters complained of herein.

VII.

Granting to the Monroe Paper Products Company the option to purchase the stock in any manner acquired by defendants (other than the corporate defendant) since July 1, 1953, and a number of shares of stock in the company to be furnished by the defendants equivalent to the number of shares acquired by others than said defendants under the escrow arrangement with the funds referred to in division (b) of paragraph 26, ante, be cancelled and retired by the company upon equitable and proper terms to be fixed by the Court herein.

VIII.

Granting plaintiffs and Monroe Paper Products Company all other relief to which they may be entitled, with their costs.

(Complaint - As Amended and Supplemented)

COUNT TWO

1. Plaintiffs refer to, and hereby incorporate, as allegations in this Count Two all of the allegations and exhibits contained in and referred to in COUNT ONE, ante, and further allege as follows

2. The arrangement made with the supplier of upwards of $40,000 referred to in paragraph 26(b) of Count One, ante, were made by Raney, said supplier, and a Monroe broker who, with the funds, was to purchase stock in the company and voting trust certificates of stockholders who had deposited their stock under the voting trust agreement.

3. In order to protect its investment in stock in the Monroe Paper Products Company against the acts and conduct of defendants Raney, Blum, Knapp, Leathers, Sempliner and Huber who, by the arrangement with said broker were furthering the objectives of their plan, scheme and conspiracy more particularly alleged in COUNT ONE, ante, and upon discovering that the funds were being used through the broker to purchase additional stock in the company and voting trust certificates, and in order to prevent the defendants from retaining the benefits of their wrongful acts previously committed, plaintiff Waterbury Co. was compelled on March 11, 1954 to commence to acquire additional stock in the company and on April 8, 1954 to commence to acquire the rights of the voting trust certificate holders who desired to demand or had demanded return of the stock which they had deposited under the voting trust agreement. As a result, Waterbury Co. had to pay prices greatly in excess of the actual value of the stock and rights purchased by it, and by so doing acquired and still owns 6837 additional shares of undeposited stock and, by assignments, also the rights of voting trust certificate holders who demanded the return

of 11,797 shares of stock which they had previously deposited under the voting trust agreement. Except as to 500 shares written demands, signed by holders of the voting trust certificates whose stock and rights were thus acquired by Waterbury Company, for the return of the deposited stock, were made upon the defendant voting trustees and the trust depositary at the time of the assignments and were not complied with. Written demand by the stockholder for return of the aforesaid 500 shares was thereafter made and refused by the voting trustees and the depositary. On September 15, 1954 the demands were renewed by Waterbury Co. accompanied by its tender of the voting trust certificates involved and said demands were refused because the voting trustees and their depositary insisted that return of the stock was not demandable by the depositors or their assigns. By reason of said purchases of said rights, assignments, and the demands by the depositors and by Waterbury Co. the latter became, was, and is entitled to the return of said 11,797 shares of deposited stock.

4. Due to the acts and conduct of the defendants Raney, Knapp, Blum, Leathers, Sempliner and Huber in the creation, furtherance and consummation of the voting trust agreement, and to the violation of the Sherman Act (15 USC §§ 1-7) and of the Clayton Act (15 USC §§ 1-27) by the provisions of the voting trust agreement restraining sale of the deposited stock by the depositing stockholders and sale by the voting trustees for less than $15 per share and except en bloc, plaintiff Waterbury Corrugated Container Co. was damaged in its business and property by being compelled to pay for the additional undeposited stock and for the rights of stockholders as to deposited stock, acquired by said

plaintiff and referred to in said paragraph 3, ante, a total of at least $110,000 in excess of the fair market value thereof; and due to the same causes and also to the refusal of the defendant voting trustees to deliver to Waterbury Corrugated Container Co. the deposited stock, the return of which was demanded as alleged in paragraph 3, ante, said plaintiff was further damaged in its business and property by the depreciation of at least $150,000 in the value of the shares of stock in the Monroe company originally purchased and owned by said plaintiff; for all of which damages, to be trebled, and for the cost of plaintiff Waterbury Corrugated Container Co's action herein, including a reasonable attorney's fee (all recoverable pursuant to 15 USC § 15) said plaintiff is entitled to and claims judgment against said defendants.

5. Due to the acts and conduct of the defendants Raney, Knapp, Blum, Leathers, Sempliner and Huber, the violations of law and the provisions of the voting trust agreement, all alleged in paragraph 3, ante, plaintiff Kinsey has been damaged in his business and property by depreciation of at least $100 in the value of the shares of stock in the Monroe company originally purchased and owned by him, for which damages, to be trebled, and for the cost of his action herein, including a reasonable attorney fee (all recoverable pursuant to 15 USC § 15) said plaintiff is entitled to and claims judgment against defendants.

6. Due to the acts and conduct of the defendants Raney, Knapp, Blum, Leathers, Sempliner and Huber, in the creation, furtherance and consummation of the voting trust agreement, and to the violation of §§ 445.701-445.712, Michigan Compiled Laws 1948 by the provisions of

the voting trust agreement restraining sale of the deposited stock by the depositing stockholders, and sale by the voting trustees for less than $15 per share and except en bloc, plaintiff Waterbury Corrugated Container Co. was damaged in its business and property by being compelled to pay for the additional undeposited stock and for the rights of stockholders as to deposited stock, acquired by said plaintiff and referred to in said paragraph 3, a total of at least $110,000 in excess of the fair market value thereof; and due to the same causes and also to the refusal of the defendant voting trustees to deliver to Waterbury Corrugated Container Co. the deposited stock, the return of which was demanded as alleged in paragraph 3, ante, said plaintiff was further damaged in its business and property by the depreciation of at least $150,000 in the value of the shares of stock in the Monroe company originally purchased and owned by said plaintiff; for all of which damages, to be doubled, and for the cost of said plaintiff's action herein, recoverable pursuant to § 445.711 Michigan Compiled Laws 1948, plaintiff Waterbury Corrugated Container Co. is entitled to and claims judgment against said defendants.

7. Due to the acts and conduct of the defendants Raney, Knapp, Blum, Leathers, Sempliner and Huber, the violations of law and the provisions of the voting trust agreement, all alleged in paragraph 3, ante, plaintiff Kinsey has been damaged in his business and property by depreciation of at least $100 in the value of the shares of stock in the Monroe company originally purchased and owned by him, for which damages, to be doubled, and for the cost of said plaintiff's action herein, recoverable pursuant to § 445.711 Compiled Laws 1948, plaintiff John P. Kinsey is

entitled to and claims judgment against said defendants.

WHEREFORE, in addition to the relief prayed for in COUNT ONE, ante, plaintiffs pray judgment that:

I.

The Waterbury Corrugated Container Co. is entitled to delivery to it by defendant voting trustees, of the deposited certificates for 11,797 shares in Monroe Paper Products Company referred to in paragraph 3, ante, accompanied by a release of all interest and claim therein of and by the defendant voting trustees, and that upon surrender of the stock certificates to the Monroe Paper Products Company the said shares be transferred to said plaintiff or upon its order; and, by mandatory injunction, requiring such delivery and transfer of said shares.

II.

That defendants Knapp, Raney, Blum, Leathers, Sempliner and Huber, pursuant to 15 USC § 15, pay to plaintiff The Waterbury Corrugated Container Co. the amount of its damages, trebled, and the cost and attorney fee, all referred to in paragraph 4, ante.

III.

That defendants Knapp, Raney, Blum, Leathers, Sempliner and Huber, pursuant to 15 USC § 15, pay to plaintiff John P. Kinsey, the amount of his damages, trebled, and the cost and attorney fee, all referred to in paragraph 5, ante.

IV.

That, pursuant to § 445.711, Michigan Compiled Laws 1948, defendants Knapp, Raney, Blum, Leathers, Sempliner and Huber pay to

plaintiff The Waterbury Corrugated Container Co. the amount of its damages, doubled, and the cost, referred to in paragraph 6, ante.

V.

That defendants Knapp, Raney, Blum, Leathers, Sempliner and Huber, pursuant to § 445.711, Michigan Compiled Laws 1948, pay to plaintiff John P. Kinsey the amount of his damages, doubled, and the cost, referred to in paragraph 7, ante.

/s/ GEORGE E. BRAND

Dated January 24, 1957

/s/ GEORGE E. BRAND, JR.

Attorneys for Plaintiffs

(Complaint - As Amended and Supplemented)

STATE OF CONNECTICUT)

SS

COUNTY OF NEW HAVEN)

John P. Kinsey, of Torrington, Connecticut, being duly sworn, deposes and says that:

He is one of the plaintiffs in the within entitled COMPLAINT - AS AMENDED AND SUPPLEMENTED and is the president of The Waterbury Corrugated Container Co., a Connecticut corporation, another plaintiff in said complaint, and makes this affidavit in his own behalf and in behalf of said corporation.

Deponent has read said complaint and the contents thereof are true, except as to those matters therein alleged to be upon information and/or belief, but he believes said allegations to be true.

/s/ John P. Kinsey

(John P. Kinsey)

Subscribed and sworn to before me this 25th day of January, 1957

/s/ F. D. Putnam

Notary Public, New Haven County, Connecticut

My commission expires: 4/1/57

(Notary Seal)

(Exhibits to Complaint - Huber Letter)

Exhibit 2

December 31, 1953

To the Stockholders of the Monroe Paper Products Company.
Dear Stockholder:

Many stockholders who supported the Management of your Company in the last Annual Meeting have requested the local directors, and other stockholders to consider setting up a Voting Trust, in order to protect and safeguard the position of all stockholders in the majority group. (By "majority group" we mean all who gave proxies to Management at the Annual Meeting last September, thus defeating the sell-out promoters.)

President Burton S. Knapp, Vice-President and General Manager Chas. E. Raney, Secretary-Treasurer George A. Blum and Directors Don B. Leathers and A. W. Sempliner, in their capacity as stockholders, have agreed to act as Trustees under a Voting Trust for all stockholders desiring to take advantage of this protection. If over 50% of the stockholders participate in the Voting Trust, the great advantage will be gained of consolidating your present majority standing, making it much more permanent and valuable than it is now.

You are in a clear majority now. This fact enables you and your fellow stockholders to elect the majority directors, with resultant stability and continuity in management of the Company under sound and progressive leadership. As you know, the directors declared dividends during 1953 totalling 60¢ per share. A 40 cent per share extra dividend

(Exhibits to Complaint - Huber Letter)

Exhibit 2

will be payable January 15, 1954. An appraisal of the Company's properties is now completed. The first appraisal in some twenty years, this reveals replacement value to be in excess of $7,000,000.00 and depreciated value of $4,361,166.82, both exclusive of inventories and lands.

We should all realize, however, that this out-in-the-open Management dedicated to your best interests, will manage your Company only so long as over 50% of the stock continues in favorable hands, and is actually represented at stockholders' meetings. Only a Voting Trust can insure this.

Unity among us is needed now, as never before, for these reasons: As you know, an out-of-state group, which we will call the "minority group", recently bought the large Groesbeck holdings, plus the holdings of some Detroit directors and their associates, and now holds about 40% of the stock. The National Container Corporation had earlier tried to obtain control over your Company, through options or proxies, but stockholders rallied to the support of the present Management and defeated this attempt. But although it was defeated, the presence of some 40% of the shares in the hands of the minority group poses a constant threat to your majority status and standing. Even if the minority group does not acquire a single extra share of stock, they might obtain control at any Stockholders' Meeting in which we did not have nearly 100% attendance -- because their proxies are concentrated in one group, while ours are widely scattered. Further, if the minority group were to buy the stock holdings of one or two of our large holders, they would come into permanent control of the Company, and the value of your shares might decline, if we were not

all unified by a Voting Trust Agreement.

The large stockholders on the majority's side, and a great number of smaller holders, have approved the idea of a five year Voting Trust. The effect would be to give a proxy to the present four local directors and Mr. Sempliner, in all of whom we all have unbounded confidence. Further, since a real value of our shares lies in their being majority-control shares all of us would agree that the shares of stock themselves, if they were to be sold during the 5 years, would be sold only as a block or unit. This would command the highest price, and every stockholder, large or small, would share equally in it without discrimination. Your Voting Trustees would have power to sell on that basis only, if it became desirable and advisable in the best interests of all during the five years, at no less than $15 per share.

In return for depositing your endorsed stock certificates with the Depositary appointed by the Voting Trustees (The Monroe State Savings Bank, Monroe, Michigan) you will receive Voting Trust Certificates. You retain the full right to sell such Voting Trust Certificates, to pledge them as collateral for loans, etc., just as you could with your original shares. As a holder of Voting Trust Certificates, you receive all dividends, cash or stock, which may be declared by the Company on the original Shares. In addition to retaining all these rights, you acquire a new and valuable contract right: that of being a member of the majority group, and of being assured of retaining that position throughout the duration of the Voting Trust.

In union there is strength. To protect your existing majority

(Exhibits to Complaint - Huber Letter)

Exhibit 2

status, to protect and increase the value and the saleability of your stock, and to guarantee the continuation of sound business policies of the present Management - these are the important purposes of the Voting Trust Agreement. Necessary flexibility, to meet changing conditions, is assured by provisions for amendment, requiring the consent of a large majority of the depositing stockholders.

In short, this proposal provides not only a perfect solution for the existing problem, which greatly handicaps the advancement of your Company, but at the same time improves and enhances your investment and that of all the majority stockholders.

We are fortunate in having enlisted the active support of Messrs. Knapp, Raney, Blum, Leathers and Sempliner. They are in close daily touch with the affairs of the Company; they will serve as Trustees under the proposed Agreement without compensation. Under their guidance, the legal papers have been drawn up by counsel, and agreed to by the Monroe State Savings Bank. You will be contacted further and furnished with any more detailed information you may desire.

Your valued cooperation is solicited.

Sincerely yours,

/s/ George J. Huber

Chairman, Stockholders' Committee

P.S. Sign the Trust Agreement and endorse your stock certificate with the name or names, exactly as typed upon the envelope in which you received the stockholder's letter, etc.

The Monroe law firm of Weipert and Weipert, which has

prepared the Voting Trust Agreement, may be contacted by you for additional information. Likewise, the Trust Department of The Monroe State Savings Bank, which will receive the endorsed stock certificates to be deposited under the Agreement and will issue the new Trust Certificates, may also be contacted for information.

INSTRUCTIONS (Please Read)

Your cooperation in making the Voting Trust Agreement effective by joining as early as possible will be appreciated. You can do this either by mail, or by calling at the Monroe State Savings Bank in Monroe, as follows:

1. Bring your stock certificates directly to the Monroe State Savings Bank. There you can sign the Voting Trust Agreement, endorse and deposit your stock certificates, and receive Voting Trust Certificates, all at the same time.

OR

2. If inconvenient for you to call at the bank; sign and mail the enclosed signature sheet for the Agreement, and your endorsed certificate of stock, directly to the bank in the enclosed envelope. You will receive your Voting Trust Certificate back by mail. Be sure to sign the Agreement signature sheet, and endorse your name on the back of each of your stock certificates, in exactly the same way your name appears on the certificates.

   In endorsing your stock certificate, it will suffice if you insert in the blank space on the back, before the word "attorney", the name of Leo Boudinet (Mr. Boudinet is the Trust Officer of the Monroe State Savings Bank, and he will transfer the certificate to the names of the Voting Trustees.) Sign your name or names as they appear on the front of the stock certificate.

   If you should require a little time to deposit your stock certificate, you can still sign the Agreement now, and mail or deliver it to the bank. This makes you a party to the Voting Trust. You should then proceed to deposit your stock certificates in order to obtain the new Voting Trust Certificates.

If you have any question, feel free to write or call Mr. Leo Boudinet at the Monroe State Savings Bank (381), or the law offices of Weipert and Weipert (2001). A representative of the Stockholders Committee will endeavor to contact you personally or by phone if you so request.

(Exhibits to Complaint - Voting Trust Agreement)

Exhibit 1

VOTING TRUST AGREEMENT

THIS AGREEMENT, made as of the 31st day of December, 1953, between such owners of shares of the common capital stock of MONROE PAPER PRODUCTS COMPANY, a Michigan Corporation, of Monroe, Michigan, (hereinafter called the "Company") as may become parties hereto in the manner hereinafter provided (hereinafter collectively called the "Stockholders"), parties of the first part, and Burton S. Knapp, Chas. E. Raney, George A. Blum, Don B. Leathers and Arthur W. Sempliner (hereinafter called the "Trustees"), parties of the second part, WITNESSETH:

WHEREAS, the subscribing Stockholders have agreed that the business interests of the Company require stability and continuity in management, and desire that the majority management be uninterrupted for the period of this agreement and continuity in its business policy thereby secured; and

WHEREAS, the subscribing Stockholders further believe it to be essential to their interests to protect themselves against the purchase of a majority of the Company shares by parties acting on behalf of other interests, and have agreed that in order to protect the value and saleability of their stock the same should not be sold except as a block or unit, if an advantageous sale were available for action by the Trustees hereunder during the period of this agreement; and

WHEREAS, certain of the parties hereto own a large number of shares, which in the absence of this agreement might go upon the market,

affecting the majority status of the remaining Stockholders, thereby giving large owners an advantage unavailable to others by way of selling price, besides impairing continuity in management needed to properly develop the rights, franchises, property and earning capacity of the Company; and

WHEREAS, for the purpose of unification and mutual protection the subscribing Stockholders have requested the Trustees to take legal title to said shares for the five year period herein provided, to be held by them upon an active trust, together with a limited power of sale, but only on the terms and conditions herein, to which the Trustees have agreed,

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) to each party hereto paid by the other parties, and other good and valuable considerations, receipt whereof is hereby acknowledged, and in further consideration of the mutual promises herein contained, and the signature of each party hereto furnishing inducement for the signature of the other parties hereto,

It is mutually agreed between the parties hereto as follows:

FIRST. Each party hereto holding shares of the capital stock of Monroe Paper Products Company to the number set opposite his, her or its name, as hereunto subscribed, respectively, hereby severally agrees to endorse and deposit said stock certificates forthwith, with sufficient transfers thereof in favor of the persons hereinbefore named as Trustees, with The Monroe State Savings Bank, of Monroe, Michigan, the Depositary hereunder, and to receive in exchange therefor voting trust certificates. Upon the making of such deposit all shares represented by stock certificates so deposited shall be transferred upon the books of said

Company, to the names of said Trustees, who are hereby fully authorized to cause such transfers to be made, and also to cause any further transfers of said shares to be made which may become necessary through the occurrence of any change of the persons holding the office of Trustee or as hereinafter provided.

SECOND. Stockholders may also become subscribing parties to this agreement at the election of the Trustees by depositing certificates for shares of the capital stock of the Company with the Depositary for transfer to the Trustees as aforesaid, all as provided in the preceding paragraph, and receiving voting trust certificates in return therefor, with identical effect as if said Stockholders had executed this agreement. Every transferee of a voting trust certificate issued under this agreement shall become a party hereto with like effect as though an original party, and shall be embraced within the meaning of the term "Stockholders" whenever used herein.

THIRD. During the period this agreement shall be in force, said Trustees shall possess the legal title to such shares of stock deposited, and shall be entitled to exercise all rights of every name and nature in and to the same, including the sole and exclusive right to vote in person or by proxy in respect of any and all such shares at every annual or special meeting of the Stockholders of the Company during the life of this agreement, the right to exercise consents and to receive dividends on said shares; it being, however, understood that the holders of the voting trust certificates to be issued under this agreement shall be entitled to receive payments equal to the net dividends collected by said Trustees upon shares

of said stock standing in their names. The Trustees covenant and agree that such stock shall not be voted by them in favor of the sale, mortgage or pledge of all or substantially all of the assets of the Company, or for any change in the capital structure of the Company or in favor of a merger, consolidation, reorganization or dissolution, except with the written consent of the record holders of a like proportion of shares represented by voting trust certificates as may be required of stockholders for any such action under the Statutes of the State of Michigan or the By Laws of the Company.

FOURTH. The Trustees hereby covenant and agree with the Stockholders, and with every holder of certificates issued as hereinafter provided, that from time to time upon request they will cause to be issued in respect of all stock deposited by them, and accepted by said Trustees or Depositary, certificates to an aggregate amount equal to the amount of all stock deposited. Such certificates shall be in substantially the following form:

(Exhibits to Complaint - Voting Trust Agreement)

Exhibit 1

VOTING TRUST CERTIFICATE
MONROE PAPER PRODUCTS COMPANY
Common Stock

No. _____ _____ Shares

This certifies that _____ has deposited the above number of shares of common capital stock of MONROE PAPER PRODUCTS COMPANY, a Michigan Corporation, with The Monroe State Savings Bank, of Monroe, Michigan, Depositary under Voting Trust Agreement between the undersigned Voting Trustees and certain stockholders of said Company, dated December, 1953, a copy of said Agreement being on file with the undersigned and with the Company, reference being had thereto as to all terms and conditions of said Trust, to which every party acquiring any interest herein expressly consents, becomes a party and is entitled to the benefits thereof. This Certificate and the interest represented thereby is transferable only on the books of said Trustees by the registered holder hereof in person or by attorney upon surrender of this certificate properly endorsed, when new like certificates will be issued.

On termination of said Agreement as therein provided the holder hereof will be entitled to receive the number of shares of Company stock called for herein, or the net proceeds of the sale thereof if said stock is sold pursuant to the power in said Agreement contained, and in the meantime to receive payments equal to the net cash dividends collected thereon by the undersigned Trustees or their successors. Until such termination the said Trustees shall possess and be entitled to exercise all rights of every nature, including the right to vote, with respect to such stock, it being expressly stipulated that no voting right passes by or under this certificate or any agreement express or implied.

This certificate shall not be valid unless duly signed by said Trustees, or on their behalf by said Depositary, their duly authorized agent.

In Witness Whereof, the undersigned Voting Trustees have caused this Certificate to be signed this _____ day of _____, 195__.

Burton S. Knapp, Chas. E. Raney,
George A. Blum, Don B. Leathers,
Arthur W. Sempliner, VOTING TRUSTEES

By: THE MONROE STATE SAVINGS BANK,
Depositary and Agent
by , Trust Officer.

A standard form for use for the transfer of such voting trust certificate may be added to the certificate.

FIFTH. The trustees may sign any or all voting trust certificates by an agent, and the Depositary hereunder is hereby constituted the agent of the Trustees. The Trustees may provide for the issuance of new voting trust certificates in lieu of lost, stolen or destroyed certificates or in exchange for mutilated certificates, under such regulations with respect to indemnity and otherwise as they may prescribe.

Voting trust certificates shall be transferable only on the books of the Trustees, by the registered holder thereof in person or by attorney, upon surrender thereof properly assigned and endorsed. In connection therewith the Trustees may require the payment of a sum sufficient to pay or reimburse them for any stamp tax or other charge or expense incurred in such transfer. The transfer books may be closed by the Trustees, or a date fixed as the day as of which the holders of voting trust certificates entitled to dividend or other distribution shall be determined. The Trustees may treat the holders of record of voting trust certificates, or when presented duly endorsed in blank, the bearers thereof, as the owners thereof for all purposes whatsoever. All notices to the holders of voting trust certificates may be given by mail addressed to the registered holders at the addresses furnished by such holders to the Trustees or Depositary.

SIXTH. From time to time after this agreement shall have taken effect the Trustees may in their discretion receive additional shares of the capital stock of the said Company upon the terms and conditions of this agreement, and in respect of all such shares so received will issue and deliver certificates similar to those above mentioned, entitling the holder to all the rights above specified.

(Exhibits to Complaint - Voting Trust Agreement)

Exhibit 1

SEVENTH. All cash dividends that may accrue upon the stock so deposited shall be paid by the Trustees to the said Depositary, which shall distribute the same pro rata among the holders of said certificates of interest in the proportion in which they shall severally be entitled thereto. Expenses of the Depositary may be deducted therefrom. The Trustees or Depositary may authorize the Company to make payment of delivery of any cash dividend directly to the registered holders of voting trust certificates. In the event that any dividend paid in stock of the Company shall be received by the Trustees, the respective holders of voting trust certificates entitled to such dividend shall be given new or additional voting trust certificates reflecting the proper proportionate increase.

EIGHTH. During the period from the date hereof to and including the 30th day of December, 1958, Stockholders agree with each other and with the Trustees, and the Trustees accept the trust upon the condition of this agreement, that they will not sell their respective Company shares, although they will be at liberty to deal with their voting trust certificates in the way of sale, pledge or otherwise, at all times and at any prices, as to them shall seem meet.

NINTH. During said period the Trustees shall have the exclusive power to sell said shares of stock; provided that no sale shall be made by said Trustees save of all the deposited shares in lump. No sale shall be made at a less price than at the rate of Fifteen Dollars ($15.00) for each and every share so deposited. The Trustees shall have sole discretion to determine the advisability or desirability of such sale, under

the circumstances then prevailing and existing.

TENTH. In the event of a sale at any time during the period aforesaid, the net proceeds shall be deposited with the Depositary, which shall distribute the same to and among the holders of voting trust certificates upon the surrender thereof. Distribution shall be pro rata among the shares and there shall be no discrimination between holders in the distribution.

ELEVENTH. Upon expiration of the term of this agreement without a sale of said shares of stock by the Trustees, the shares themselves shall thereupon be delivered to the Trustees by the Depositary for transfer by the Trustees to the holders of voting trust certificates, in the proportion of their respective holdings, upon surrender of said certificates to the Depositary, and this agreement shall be at an end. The obligation or duty of the Trustees under this agreement shall terminate upon delivery of said shares of the capital stock of the Company (or the proceeds of sale of all stock deposited under this agreement as aforesaid), to the Depositary with instructions to deliver or make payment to the registered holders of voting trust certificates in accordance with their respective interests.

TWELFTH. The Trustees covenant and agree to deposit with the Depositary under this agreement the stock of the Company owned by them respectively, and to take voting trust certificates therefor. Nothing herein contained shall deprive the Trustees as individuals of the privilege to be enjoyed by all other depositors of selling or otherwise disposing of said voting trust certificates at their pleasure, or of purchasing additional

certificates, or of purchasing additional stock and selling the same, or of joining in a syndicate to purchase under the power of sale herein given, at not less than the price herein named. Any Trustee may act as, and receive compensation as, a director, officer, agent or member of any committee of the Company, and shall be under no disability to contract with the Company.

THIRTEENTH. The Trustees are authorized to transfer such number of shares of stock as may be necessary to such persons as may be elected to serve the Company as directors or in any other capacity, or to allow such shares to remain in the names of such persons, in order to qualify them to act; but the Trustees may require certificates for such shares to be endorsed in blank by such persons, deposited with the Trustees and held by them for the purpose of this agreement, or may make other arrangements for the return of such qualifying stock when the holder shall have ceased to be a director.

FOURTEENTH. The Trustees shall not be entitled to any compensation for their services. In the event of a sale as provided in this agreement, the expenses and disbursements incurred by the Trustees as such may be deducted from the proceeds to be distributed.

FIFTEENTH. The Trustees shall have full power and authority to appoint a successor Depositary to act hereunder, and to authorize delivery by the retiring Depositary to the Depositary so appointed of all certificates of stock then held hereunder by the former. Upon acceptance of such appointment the new Depositary shall be clothed with all the power of, and shall be subject to all duties and obligations

hereby imposed upon, the Depositary herein named. Any Depositary acting hereunder shall receive reasonable compensation for services performed, and reimbursement for all expenses incurred hereunder, and to the extent that adequate provisions shall not have been otherwise made shall have a lien therefor on the shares deposited or held hereunder, the income received thereon and the proceeds thereof.

SIXTEENTH. Any Trustee may at any time resign by delivering to the other Trustees in writing his resignation to take effect ten days thereafter, and in every case of the death, resignation or vacancy arising through other cause, the vacancy so occurring shall be filled by the appointment of the successor or successors to be made by the other Trustees by a written instrument filed with the said Depositary. The term "Trustees" as herein used shall apply to the parties of the second part and their successors hereunder.

SEVENTEENTH. All questions arising between the Trustees, including the appointment of successor Trustees, shall from time to time be determined by a decision of the greater number of those then acting as Trustees either at a meeting or by writing, with or without meeting, and in like manner they may establish their rules of action; the decision or act of a majority of the Trustees shall for the exercise of the voting power and for all purposes of this agreement, be deemed the decision or act of all the Trustees. A majority of the Trustees in office at the time, in person or by proxy, shall constitute a quorum at any meeting of the Trustees.

EIGHTEENTH. In voting stock under this agreement the Trustees will exercise their best judgment from time to time to select

suitable directors to the end that the affairs of the Company shall be properly managed, and in voting on other matters which may come before them at any stockholders' meeting will exercise like judgment.

NINETEENTH. No Depositary hereunder shall incur any liability to any of the parties hereto, or to any assignee of any voting trust certificate or certificates, except for its own wilful default or the failure to exercise ordinary care in the performance of its duties as hereunder prescribed.

TWENTIETH. This agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute one and the same instrument.

TWENTY-FIRST. This agreement and the trust, covenants, agreements and powers herein contained, shall be binding upon all parties hereto and depositors hereunder, their heirs, administrators, executors, successors and assigns, upon execution by Stockholders, or deposit with the Depositary hereunder, representing a majority of the presently outstanding capital stock of the Company, and shall continue in binding force and effect until December 31, 1958, unless sooner terminated by distribution under paragraph Tenth hereinabove. Provided, however, that at any time prior to the said termination date of this agreement, the then Trustees by unanimous action concurred in by consent of the registered holders of at least sixty per cent (60%) of the number of shares represented by voting trust certificates outstanding hereunder, such consent to be given in writing or at a meeting duly called by the Trustees for the purpose, may modify and amend any provision or terms

of this agreement, other than the maximum duration provided herein. In the absence of unanimous consent by said Trustees, plus such ratification by certificate holders, such modification and amendment may be affected only by majority vote of said Trustees concurred in by the consent of the registered holders of at least seventy per cent (70%) of the number of shares represented by voting trust certificates outstanding hereunder, given in writing or at a meeting duly called for the purpose.

The meeting of holders of voting trust certificates above provided for may be called by the Trustees, and shall be held in the City of Monroe, Michigan, at such place as they may designate. The notice of such call shall set forth the time, place and purpose of such meeting, and shall be mailed at least ten (10) days before the date of such meeting to each registered holder of voting trust certificates outstanding hereunder who shall not have executed written waiver of such notice. At such meeting every such registered holder shall have one vote for each share of capital stock represented by voting trust certificates standing in his name, and may vote in person or by proxy. Every holder of voting trust certificates agrees to be bound by such modification or amendment meeting the percentages above specified; but no such change shall extend the duration of this agreement beyond the original five year term.

TWENTY-SECOND. This agreement is entered into pursuant to section 34 of the Michigan General Corporation Act. An unexecuted copy hereof shall be filed by the Trustees in the registered office of the Company, open to inspection as provided in said Act.

IN WITNESS WHEREOF, the several parties hereto have

(Exhibits to Complaint - Voting Trust Agreement)

Exhibit 1

hereunto set their hands and seals, and the trustees have hereunto set their hands and seals in token of their acceptance of the trust hereby created.

The Monroe State Savings Bank, the Depositary named and referred to in the foregoing instrument, hereby acknowledges receipt of a copy of said instrument and notice of all the terms thereof, assents to the same and agrees to act as Depositary under the terms and conditions herein set forth. IN WITNESS WHEREOF, it has given its consent to be executed by its duly authorized officer, and its corporate seal to be hereunto affixed this 31st day of December, A. D. 1953.

THE MONROE STATE SAVINGS BANK TRUSTEES

By Leo Boudinet,(sgd.)
Leo Boudinet, Trust Officer

Burton S. Knapp (sgd.)
Burton S. Knapp

Chas. E. Raney (sgd.)
Chas. E. Raney

George A. Blum (sgd.)
George A. Blum

Don B. Leathers (sgd.)
Don B. Leathers

Arthur W. Sempliner (sgd.)
Arthur W. Sempliner

STOCKHOLDERS

Name	Address	No. of Shares

(Complaint - As Amended and Supplemented)

STOCKHOLDERS WHO HAVE SIGNED THE TRUST AGREEMENT, PREVIOUS TO THE TIME OF STARTING THE AGREEMENT SIGN-UP CAMPAIGN

Depn. Ex. 22

Nellie or Leonora Baier
Lafayette F. Beaubien
Gene L. and/or Mabelle E. Bennett
*George A. Blum
George A. and Helen E. Blum
Robert J. and/or Joan Marie Brennan
Roger O. and/or Margaret Jane Case
Alvin J. Conlisk
A. J. Cronin, Jr.
Ada C. Fix
Lucille A. Fix
Ben or Linda Fritz
Gratton Construction Company
Marion F. or Eleonora A. Guettler
Elsie Gutmann
John F. or Netta M. Gutmann
Margaret Gutmann
Margaret K. and Elsie A. Gutmann
Harold H. or Regina A. Heinzerling
Marion C. Holeíca
George J. Huber
Bernard F. Kirby
*Burt S. Knapp
Mae E. and Russell W. Knapp
Vernon K. Knapp
Ethel L. and Harold F. Korneffel
*Don B. Leathers
Gustav or Beulah Mainzinger
Thos. J. or Alice Marks
Edgar W. and/or Ruth H. Marvin
Monroe Scrap Material Company
John E. Murphy
George J. McMahon
*Charles E. Raney
Charles E. or Olive M. Raney
J. Marion or Maggie J. Robertson
*Arthur M. Sempliner
Ida M. Sempliner
Victor Weipert
Wm. Weipert, Jr.
Hilda or Cecelia Zeller

Note: The above represents a total of 41,114-1/8 shares.

*denotes Directors

ANSWER OF DEFENDANT VOTING TRUSTEES TO AMENDED COMPLAINT

(Filed Feb. 12, 1957)

For answer to the latest amended complaint filed by the plaintiffs on or about January 30, 1957, the defendants Burton S. Knapp, Charles E. Raney, George A. Blum, Don B. Leathers, and Arthur W. Sempliner as voting trustees respectfully show:

Said defendants claim the benefit of a motion to dismiss said complaint for prolixity and surplusage; and saving the benefit of such motion they aver:

FIRST DEFENSE

These defendants admit that the matter in controversy exceeds the sum of $3,000 exclusive of interest and costs, that the plaintiffs are citizens of Connecticut and that the defendants are citizens of Michigan; and they deny that the complaint states any cause of action arising under any law of the United States.

COUNT I

1. The allegations of paragraph 1 are admitted.

2. The allegations of paragraph 2 are admitted except that these defendants aver that the defendant company sells its products in the midwest areas of the United States and in New York and Pennsylvania and that it has been from time to time a supplier to the United States Rubber Company.

3(a) The allegations of paragraph 3(a) are admitted except as to the allegation that Alex J. Groesbeck dominated and controlled the

officers, directors, and affairs of the defendant company, which allegation is denied.

3(b) These defendants deny the allegations of paragraph 3(b) except as follows:

That at a directors' meeting held on or about June 26, 1953, certain members of the board of directors then or afterwards conniving with the plaintiffs sought to procure the election of the administrators of the Groesbeck estate to be president and secretary-treasurer of the company and to procure the election of one of said administrators as a director of the company, the other administrator already being a director. That defendants Knapp, Raney, Blum, and Leathers, deeming such action contrary to the company's best interest, voted against the same so that said project failed. That thereupon said board unanimously elected defendant Knapp as president of said company, he having been a stockholder of said company since its organization, having been a director of the company for many years, and being a well-known and prominent citizen of the community. That at the same time and in the same manner Joseph A. Moynihan, Jr., attorney for certain parties in interest in the Groesbeck estate, was elected a director of said company. That defendant Blum, the then secretary-treasurer, was continued in office. That said minority directors, being annoyed, declared that they would cause the whole board to be voted out of office at the next stockholders' meeting. That thereafter and on or about September 23, 1953, at the annual stockholders' meeting of the defendant company, said Moynihan withdrew as a director and defendant Sempliner was thereupon unanimously elected a director. That at said stockholders'

meeting defendants Raney, Blum, Knapp, and Leathers were likewise unanimously elected directors and still continue and are presently acting as such.

3(c) The allegations of paragraph 3(c) are admitted.

4. The allegations, arguments, and conclusions alleged in paragraph 4 are denied, except that these defendants admit that for many years it was and still is the policy of the company to be conservative as to the payment of salaries, to maintain a substantial cash reserve, and to make necessary improvements from time to time.

5. The allegations of paragraph 5 are denied except as follows: That at the annual stockholders' meeting held in September, 1952 defendant Knapp offered a resolution (which was carried) authorizing the expenditure of a substantial sum for capital improvements; and that said meeting ratified the previous purchase of 10,000 shares of company stock and ordered the retirement thereof. Further, these defendants show that at said meeting a resolution was passed whereby the officers of the company were authorized to buy in for the company not more than 10,000 shares of its stock if necessary to afford a market for stockholders desirous of selling. These defendants further show that the defendant company's stock was unlisted and at that time was not actively traded in.

6. The defendants admit the allegations of paragraph 6 except that they have no knowledge as to whether the directors other than themselves did or did not purchase stock for their individual benefit between September, 1952 and June 1, 1953.

7(a) - 7(b). These defendants are advised that paragraphs

7(a) and 7(b) are not allegations of fact but are purported propositions of law to which they are not required to answer.

8 - 9. The allegations of paragraph 8 and 9 are denied.

10. For answer to paragraph 10 these defendants deny that they were or are parties to any plan, scheme, or conspiracy, deny that they did any act for the purpose of carrying out any plan, scheme, or conspiracy, and severally deny all of the acts alleged in all of the subdivisions and sub-subdivisions of said paragraph except as follows:

(a) Following the death of said Groesbeck, one Hugo Krave, a stockholder and director of defendant company and one of the administrators of said Groesbeck estate, together with one Charles E. Feinberg and one Harry Grant, stockholders and directors of the defendant company, did enter into a conspiracy to seize control of the defendant company, to manipulate the defendant company to their personal advantage, to conceal from other stockholders the true state of the defendant company's affairs, to prevent distribution of the company's earnings to its stockholders, to personally acquire as much stock as possible at less than its value, and to personally profit by unloading their personal holdings in conjunction with a sale of the Groesbeck estate's stock.

(b) Then or shortly thereafter said conspiracy was joined in by plaintiff Kinsey, plaintiff Kunkel, and plaintiff Waterbury Corrugated Container Company; and said conspirators procured the assistance and counsel of Thomas E. Griffin, then one of the attorneys for the defendant company.

(c) Said conspirators unsuccessfully solicited defendant

Sempliner, a stockholder and afterwards director of defendant company, to join in said conspiracy.

(d) On or about June 26, 1953 at a directors meeting of defendant company, said Feinberg, Krave, and Grant sought to remove defendant Blum from his office as secretary-treasurer of defendant company and to substitute Margaret Simmons, another administrator of the Groesbeck estate; also to elect said Simmons as a director of defendant company.

(c) The defendants Knapp, Raney, Blum, and Leathers, being a majority of the board of directors of defendant company, then and there declined to vote as requested, said defendants having regard to said defendant Blum's long and faithful service to the company and being distrustful of said Simmons' intentions.

(f) Thereupon the entire board of directors joined in electing as director Joseph A. Moynihan, Jr., he being the attorney for one of the heirs of said Groesbeck estate.

(g) At said directors meeting, said Feinberg, Krave, and Grant sought to elect said Krave as president of defendant company.

(h) Defendants Knapp, Raney, Blum, and Leathers, being a majority of the board of directors, then and there declined to vote as requested, being distrustful of said Krave's intentions and believing that it would be for the best interest of the company if the president were a person well known to the other stockholders and well thought of in the community.

(i) Thereupon the entire board joined in electing defendant

Knapp as president, he having been a stockholder since the organization of the company, having been a director for many years, and being prominent and well respected in the community.

(j) The defendant company, many years before, had had its machinery and equipment appraised by Lloyd-Thomas Company, a nationally-known firm of appraisal engineers; and some time before the death of said Groesbeck, the defendant company's board had directed that another appraisal be secured but such matter had not been attended to. Accordingly and in the summer of 1953, defendant Raney as general manager, at the request of defendant Knapp as president, caused said Lloyd-Thomas Company to make a new appraisal. Said appraisal, when completed, showed the defendant company's machinery and equipment to be worth much more than its then book value and to be inadequately insured. Additional insurance was accordingly obtained.

(k) It having been the custom of the defendant company for many years that it should be represented by a Detroit attorney and a Monroe attorney selected from time to time by the president or general manager, and the Detroit attorney (said Groesbeck) having died, defendants Knapp and Raney as president and general manager employed as company attorney Hugh Francis, a lawyer of excellent standing and a former associate of said Groesbeck, said Francis being also a stockholder in the defendant company.

(l) When it became known that the company's Monroe attorney, Thomas E. Griffin, had undertaken to represent said directors Feinberg, Grant, and Krave and their associates, defendants Knapp and

Raney, as president and general manager, employed Weipert & Weipert in his place as local attorney for the defendant company. Said Weipert & Weipert were a prominent Monroe law firm, the partners being stockholders in the defendant company.

(m) Said directors Feinberg, Krave, and Grant adopted a program of continual frivolous criticism of the defendant company's management and continually challenged the authority of its officers to conduct the routine affairs of the defendant company; and in consequence defendant Raney called on said Francis as company attorney to advise the company as to the scope of the general manager's authority under the law and the corporation's by-laws. Thereupon said Francis orally and in writing advised the company that the general manager had authority to do any act which the board of directors had authority to ratify, that being a correct statement of applicable law.

(n) During the summer of 1953 disputes arose between the defendant company and the labor union representing its truck drivers so that negotiations became necessary and the defendant company needed the services of an attorney experienced in labor matters. Accordingly the defendant Raney as general manager employed Arthur W. Sempliner, a Detroit lawyer with extensive labor experience, a circuit court commissioner, and a stockholder of defendant company.

(o) In the course of the company's labor negotiations, it appeared that some form of employee's pension plan would have to be established for the shop workers if relations were to be harmonious, and it became generally known that the company was considering the establish-

ment of such plan. The company's office workers and administrative employees were not organized, and it had been the company's custom for many years that any concession or fringe benefit extended to the shop workers should be paralleled by the grant of similar benefits to the office workers and administrative employees. Accordingly defendant Raney as general manager, in order to retain for the company the good will of said administrative employees, posted a bulletin board notice to the effect that if a pension plan was established for shop workers, some similar plan would thereafter be established for office workers. Thereafter the defendant company by unanimous board action did in fact establish parallel pension plans both for the shop workers and the office employees.

(p) Said directors Feinberg, Grant, and Krave began a campaign for the purchase of stock in the defendant company and personally and through brokers solicited other stockholders to sell their holdings. At the same time said directors gave notice to the defendant company that an active market for the stock had been created, that the resolution adopted at the previous annual meeting authorizing the purchase of stock for the purpose of making a market was no longer applicable, and that the defendant company was not authorized to buy in its own stock for the treasury. Said directors threatened litigation with the company if the company thereafter purchased any of its own stock.

(q) Theretofore director Krave and said Simmons as administrators of said Groesbeck estate had announced that said estate's stock in defendant company would not be sold in the course of administration and would be distributed to the heirs. One of said heirs approached

defendant Raney to inquire if he or his acquaintances or defendant company would purchase the stock which such heir expected to receive. Upon learning of such approach, said directors Krave, Feinberg, and Grant caused said Groesbeck estate to alter its program, to offer said estate's stock to their confederates by administrators' sale, and to distribute no stock to the heirs.

(r) Said directors Feinberg, Krave, and Grant informed the defendant directors Knapp, Raney, Blum, and Leathers that they intended to foment a proxy fight at the forthcoming stockholders' meeting and to solicit proxies in opposition to the management and to remove said Knapp, Raney, Blum, and Leathers from office as directors.

(s) Said directors Feinberg, Grant, and Krave entered into negotiation with plaintiff Kinsey, plaintiff Kunkel, plaintiff Waterbury Corrugated Container Company, National Container Corporation, one Shapiro, Kipness, and others to procure financial assistance and introduced plaintiff Kinsey and others into the defendant company's plant to examine same.

(t) Said directors Feinberg, Grant, and Krave and their said co-conspirators procured said Groesbeck estate to grant an option on its stock in the defendant company at $10.00 per share to National Container Corporation and personally granted like options on their own stock to said National Container Corporation, and began an intensive newspaper and letter campaign to induce other stockholders to grant like options and to give proxies for the voting of their stock at the forthcoming annual meeting, to the end that they might oust and supplant the defendant

company's management and might sell at one transaction a block of stock comprising a substantial majority of all the outstanding stock.

(u) The defendants Knapp, Raney, Blum, and Leathers, as stockholders and directors, were of the opinion that said campaign contemplated the acquisition of only enough stock to give working control to said National Container Corporation group, and that there was no intention to purchase the stock of all small stockholders who might desire to sell; that said program was likely to introduce an irresponsible and untrustworthy management; that the stockholders were not adequately informed; that the interests of all stockholders and of the community would suffer if control of the defendant company passed into the hands of non-residents; that affiliation of the defendant company with said National Container Corporation and with the plaintiff Waterbury Corrugated Container Company would be likely to involve the defendant company in difficulties under the federal anti-trust laws; that minority stockholders could not count upon fair treatment if said Feinberg-Grant-Krave group acquired majority control; and that said Feinberg-Grant-Krave program ought to be defeated.

(v) In their said publicity said directors Feinberg, Grant, and Krave asserted that they would offer defendant Raney an attractive employment contract and requested that the options and proxies so solicited by them should be forwarded to said Thomas E. Griffin, without disclosing that said Griffin had ceased to be the attorney for the defendant company. Such assertion and such non-disclosure were intended to convey the impression that the defendant company's management was

in sympathy with such program.

(w) Thereupon the defendants Knapp and Raney as president and general manager caused an advertisement to be published in the local newspaper at the company's expense stating that the company management was not associated with said option campaign.

(x) Sundry stockholders, being distrustful of said Feinberg-Grant-Krave program, organized a stockholders' committee to urge stockholders to retain their stock, to withhold such options, and to give proxies to management.

(y) Said stockholders' committee invited said Weipert & Weipert to act as their counsel, and there being no apparent conflict of interest between said committee and the defendant company, said Weipert & Weipert accepted such employment, and for their services to said committee they were paid by said committee and not by the defendant company.

(z) Finding it difficult to obtain options, said directors Feinberg, Krave, and Grant established in sundry banks so-called escrows and deposited large sums of money which were used for the purpose of buying stock and proxies.

(aa) Various stockholders friendly to the defendant company's management felt obliged to sell their stock at the $10.00 price offered in said option campaign but were unwilling to sell to said Feinberg-Krave-Grant group. At the same time numerous employees of the defendant company, and several suppliers, customers, and others acquainted with the defendant company were and had for a long time been desirous of purchasing stock. Defendants Raney, Blum, and Leathers

were prepared to buy additional shares to protect their existing holdings. It became necessary for some group or committee to bring such buyers and sellers together.

(bb) Accordingly Bernard F. Kirby, John F. Gutman, and Hilda Zeller (being stockholders and also employees of the defendant company) entered into a trust agreement and opened an escrow account with the Monroe State Savings Bank and instructed said bank to receive deposits from any one referred by said stockholders' committee or by said trustees and to use said deposits for the purchase of stock in defendant company at $10.00 per share, stock so purchased to be distributed among depositors pro-rata to their deposits or as might be agreed on between said depositors and said trustees.

(cc) Said trustees caused the existence and purpose of said escrow to become public knowledge in the community.

(dd) The defendants Raney, Blum, and Leathers paid into said escrow $16,000, $5,000, and $15,000 respectively and respectively acquired 1,600, 500, and 1,500 shares of the defendant company's stock.

(ee) One Marion Guettler, a long time employee of the defendant company, with the approval of defendant Raney as general manager, borrowed $427.50 from the defendant company, which sum she duly repaid. It had been the custom of the defendant company for many years to so lend employees small sums of money. These defendants are informed and believe that said Guettler used said money so borrowed toward the purchase of fifty-seven shares of the defendant

company's stock.

(ff) Said directors Feinberg, Grant, and Krave sought to prevent the normal company solicitation of proxies for the annual meeting of September, 1953; sought to have the company solicit proxies in form such that the minority board faction could control the manner of their voting; and sought to prevent the sending of a management letter with the proxy request.

(gg) Defendants Knapp, Raney, Blum, and Leathers as directors duly and lawfully voted for and the board of directors caused defendant company to solicit all stockholders for proxies to be voted by said defendants for the re-election of the then board or so many thereof as might be nominated and willing to serve if the proxy strength should be sufficient; and that the expense of such proxy solicitation was paid for by defendant company and was reasonable in amount.

(hh) Said directors Feinberg, Grant, and Krave and their associates were unable to assemble sufficient shares or options to form a majority block notwithstanding their publicity and solicitation and purchase campaigns.

(ii) Said directors Feinberg, Grant, and Krave failed in their said proxy campaign and upon the holding of said stockholders' meeting on or about September 23, 1953 there was a substantial majority for management; and thereupon by agreement defendants Knapp, Raney, Blum, Leathers, Sempliner, and said Feinberg, Grant, and Krave were nominated; and no other candidates were nominated; and all of said persons were unanimously elected as directors.

(jj) Said stockholders' meeting declined to approve the purchase by the company of any additional stock for the treasury.

11. These defendants admit that the plaintiff Waterbury Corrugated Container Company and others caused about 75,000 shares of defendant company stock (being about 40% of the total outstanding) to be presented to the company on or about October 9, 1953 for transfer to Bender & Company; admit that Bender & Company were nominees of the Chase National Bank and of the Waterbury National Bank, creditors of the Waterbury Corrugated Container Company; admit that Bender & Company sometime after the suit transferred said stock to the name of the plaintiff Waterbury Corrugated Container Company; and admit that plaintiff Waterbury Company caused a small number of said shares to be transferred into the name of plaintiff Kunkel as its nominee. These defendants have no knowledge as to the citizenship of Bender & Company or of the partners therein. The other allegations of paragraph 11 are denied, and defendants aver that the actual facts are as follows:

(a) The plaintiffs and said Feinberg, Grant, and Krave and their associates determined to proceed with their said conspiracy notwithstanding that they did not then have a majority of the stock, and determined from time to time to secure additional shares until they should have such majority; that accordingly they determined to buy so much of said stock as had been optioned, but not with their own money; and determined and agreed that they would fraudulently appropriate the defendant company's funds to such purpose; that they purchased said optioned block of stock from the Groesbeck estate, and they procured the necessary funds by

bank loans, representing to said banks that the defendant company's money would be used for the repayment of such loans.

(b) Said Krave remained as record owner of certain shares in defendant company, but by a secret arrangement whereby they belonged to plaintiffs and he is permitted to receive and retain the dividends thereon. Said Krave afterwards attempted to resign as a director and the board declined to accept his resignation while this suit was pending.

12. Defendants admit the allegations of paragraph 12 and further say that the resignation of director Grant and the election of plaintiff Kinsey in his place was requested by the plaintiffs and was voted for by these defendants as an accommodation to the plaintiffs.

13. Denied, and these defendants aver the facts to be as follows: That the plaintiff Kinsey is the controlling stockholder of plaintiff Waterbury Corrugated Container Company and of Housatanic Corrugated Box Co.; that said plaintiff Waterbury Company owns all of the stock of Franklin Paper Company; that plaintiffs Kinsey and Kunkel are directors and officers of all said corporations; that said plaintiffs and their said affiliated and subsidiary concerns are in large part engaged in the same business as the defendant company; that said plaintiffs and defendant company both sell to the United States Rubber Company; that the defendant company and the plaintiff have an extensive trade area in common and compete therein; that the plaintiffs purchased said defendant company's stock as part of said conspiracy described in paragraph 10 above for the purpose of unjustly enriching themselves ~~at the expense~~ of the defendants and other stockholders for the purpose of suppressing

competition and for the purpose of diverting defendant company's output to their own customers contrary to defendant company's best interests.

14. Denied.

15. Paragraph 15 and all of its subdivisions are denied, and these defendants aver the true facts to be as follows:

i. On or about October 13, 1953 the defendant company had in its bank accounts about $700,000 (equivalent to $3.76 per share of outstanding stock), a sum greatly in excess of its cash requirements. Defendant company then had as earned surplus and undivided profits over $1,000,000 (equivalent to $5.36 per share of outstanding stock). The defendant directors in the exercise of their best business judgment considered that a substantial extra dividend ought to be distributed promptly after the first of the year. It was not expected that there would be any further board meetings for several months. Accordingly at a board meeting of October 13, 1953 an extra dividend of forty cents per share was declared, payable January 15, 1954 to stockholders of record January 1, 1954. The defendant directors voted for such dividend, and the plaintiffs' group voted against it. The plaintiffs afterwards accepted and retained such dividend.

ii. On or about November 1, 1953 the trustees of the escrow fund described in paragraphs 10(aa) to 10(dd) above caused all unused money in said account and all shares of stock acquired thereby to be distributed among the contributors; and the manner of distribution was satisfactory to all the participants; and neither the plaintiffs nor their predecessors in title ever had any interest in said escrow. The

defendants further aver that at about the same time the plaintiffs' faction liquidated their own escrow accounts (described in paragraph 10(z) above.)

iii. The plaintiffs denied and then admitted that they were the real purchasers of said Groesbeck stock; admitted and then denied that other parties were interested with them in such purchase; asserted that they did not intend to acquire any more stock; asserted that they did intend to acquire more stock and would do so secretly; claimed that the stock holdings of the stockholders not cooperating with them might become of small value; and generally failed to inspire the confidence of the defendants and other stockholders.

iv. Thereupon these defendants and other stockholders (including some who were also employees of the defendant company) consulted together from time to time and determined to use all lawful means to defend their investment in the company, and prevent the plaintiffs from acquiring control of the company; to prevent the recurrence of disturbing proxy fights; and to insure the good management of the company by officers and directors enjoying the confidence of their fellow stockholders. Accordingly it was resolved (a) to reorganize the stockholders' committee, and (b) to organize a voting trust.

v. Accordingly the defendant Huber, a stockholder, became chairman of said stockholders' committee and Weipert & Weipert became counsel for said committee.

vi. It was further agreed that said voting trust should be for a term of five years; that it should not become operative unless the

holders of a majority of the stock should join therein; and that all expense connected with the formation of such a voting trust should be borne by the committee or by individual stockholders and not by the defendant company.

vii. Upon the advice of said committee's counsel and to guard against unexpected contingencies, it was further agreed that the voting trustees should be empowered to sell the stock to be deposited in said voting trust at not less than $15.00 a share, subject to amendment provisions to be inserted in such voting trust agreement.

viii. At that time said stock was being offered and traded in at prices ranging from $13.00 to $20.00 per share. The stock's book value was in excess of $10.00 a share which was known to be less than its true value. The company's earnings were substantial, and said authorized sale price was reasonable.

ix. These defendants were at first unwilling to act as voting trustees and ultimately consented only upon the insistence of other stockholders.

x. In December, 1953 these defendants and other leading stockholders did commit themselves in writing that they would join in and execute such a voting trust as soon as such an instrument could be printed; and all of said persons did afterwards do so.

xi. On or about January 7, 1954 said stockholders' committee did send to numerous stockholders a printed copy of the proposed voting trust agreement, a letter of explanation, and a list of those stockholders mentioned in paragraph x above who had bound themselves to join in said voting trust. Said papers are Exhibits 1, 2, and 3

respectively to the plaintiffs' latest amended complaint.

xii. None of said papers (Exhibits 1, 2, and 3 aforesaid) was ever sent to the plaintiffs or was ever relied on or acted upon by them.

xiii. Said letter of explanation (Exhibit 2 aforesaid) requested concurring stockholders to adopt said voting trust by executing a copy of said voting trust agreement, or by delivering an executed signature card to the depositary bank, or by depositing their stock certificates for exchange into voting trust certificates.

xiv. The plaintiffs twice circularized the defendant company's stockholders urging them not to affiliate with said voting trust.

xv. On or before February 1, 1954 about 310 stockholders, being 80% of all stockholders and being the owners of more than 97,000 shares and of a majority of all of the defendant company's issued and outstanding stock had duly adhered to said voting trust agreement, and the same became operative.

xvi. No part of the expense connected with the organization of said voting trust was ever paid by the defendant company.

16. Admitted and these defendants further show:

(a) Said voting trust certificates were never offered to the public and the distribution thereof was limited to the small group of persons who were already stockholders of the defendant company, so that said voting trust certificates were not required by law to be registered with the Securities and Exchange Commission.

(b) The contract between the defendant voting trustees and

the voting trust depositors embodied in said voting trust agreement was not rendered void by the Securities Act of 1933 or by any other act regardless of whether said voting trust certificates were or were not required to be registered with the Securities and Exchange Commission; and by the terms of said Act said agreement was and is in every respect valid as against the plaintiffs and all other strangers to the agreement; and by the terms of said Act said agreement, even if required to be registered, was and is in every respect valid as to all parties to the agreement except such of the original parties, if any, as might within one year bring suit to recover the consideration paid; and no such suit was brought and said period of one year has long since expired.

(c) By the terms of said Act any cause of action for failure to register said securities is non-assignable.

(d) Any cause of action now claimed by the plaintiffs as assignees of an original voting trust depositor accrued more than one year prior to any pleading of such claim in this action.

17. Admitted, and these defendants further show:

(a) The issuance of said voting trust certificates did not involve the sale or trading in of securities within the meaning of the Michigan Blue Sky Law and was an isolated transaction; and said voting trust certificates were not by said Act or any other act required to be accepted for filing or licensed by the Michigan Corporation and Securities Commission.

(b) The contract between the defendant voting trustees and the voting trust depositors as embodied in the voting trust agreement was

not rendered void by the Michigan Blue Sky Act or by any other law regardless of whether said voting trust certificates were or were not required to be accepted for filing or licensed by the Michigan Corporation and Securities Commission; and by the terms of said law said agreement was and is in every respect valid as against the plaintiffs and all other strangers to the agreement; and by the terms of said law said agreement, even if said certificates were required to be accepted or licensed thereunder, was and is in every respect valid as to all parties to the agreement except such of the original parties, if any, as might within two years bring suit to recover the consideration paid, and that no such suit was brought and such period of two years has long since expired.

(c) By the terms of said law any cause of action for failure to obtain the filing or licensing of said voting trust certificates is non-assignable.

(d) Any cause of action now claimed by the plaintiffs as assignees of any original voting trust depositor accrued more than two years prior to the pleading of such claim in this action.

18. Denied except as to the allegations with reference to the Securities and Exchange Commission, which allegations are admitted to the following extent:

(a) On the filing of this suit the plaintiffs applied to the United States Securities and Exchange Commission to investigate these defendants; caused one or more members of Congress to interview said Commission on plaintiffs' behalf; applied to the Michigan Corporation and Securities Commission to investigate the defendants; furnished said

Commissions with copies of their complaints, amended complaints, briefs, and incomplete extracts from depositions; and plaintiffs falsely accused defendants of criminal violations of the Federal Securities Act, of the State Blue Sky Act, and of the Federal Mail Fraud Act, etc. Said Securities and Exchange Commission investigated said charges, raised and discussed the question of whether the voting trust certificates should have been registered, suggested that if a belated registration were made the question would be obviated, investigated further and took no action.

(b) The purpose and intent of the plaintiffs' said activity was to intimidate and harass the defendants, to frighten them into surrender, and to pervert the authority of government agencies to influence the outcome of private litigation.

19. Denied.

20. Denied. These defendants aver that the amount of raw materials purchased by defendant company from time to time has varied somewhat due to reasonable and successful efforts to anticipate rising costs; that all such materials have been fairly and openly purchased at not more than market prices; that there has never been more than a reasonably adequate supply on hand ; and that there has been no deterioration.

21. Denied as to all of its subdivisions and sub-subdivisions, and these defendants aver the true facts to be as follows:

i. Upon the beginning of the labor union's agitation for a pension plan for shop workers, the defendant Raney as general manager consulted with Daniel F. Holefca, a well-known pension plan consultant,

which action was afterwards approved by the defendant company's board of directors.

ii. Pending the negotiations with said union, defendant Raney as general manager posted a notice to the effect that if a pension plan was provided for the shop employees, something similar would be provided for the office employees, this being in accord with long custom of the defendant company and its directors.

iii. Said Holefca, in September, 1953 purchased 500 shares of defendant company stock as an investment for a family trust, and afterwards and in January, 1954 he caused said shares to be exchanged for voting trust certificates.

iv. In January, 1954 defendant company's board of directors approved a shop pension plan and, at the request of plaintiff Kinsey and his associated directors, deferred consideration of an office pension plan; and plaintiff Kinsey and his associated directors complained of defendant Raney's having posted the notice mentioned in sub-paragraph ii above, and accordingly at their request and on or about January 27, 1954 defendant Raney cancelled said notice.

v. Some time after the beginning of said agitation for pension plans, defendant Raney as general manager consulted said Holefca with reference to an office employees' pension plan and said Holefca appeared before the defendant company's board numerous times to discuss and explain the proposed plan to all of the directors including plaintiff Kinsey.

vi. Defendants Raney and Blum requested said Holefca to

design a pension plan which would not include them as beneficiaries, thinking that because of their ages their inclusion might make the cost of the plan more than the company could afford. Said Holefca advised them and all members of the board that he doubted whether a plan which omitted part of the full-time salaried administrative staff could be approved by the Treasury Department, and he prepared and submitted to the defendant company's board calculations and estimates for plans both with and without the inclusion of Raney and Blum.

vii. Defendants Knapp, Leathers, Sempliner, and Huber were never considered for inclusion in said pension plan. Defendants Raney and Blum never pressed for their inclusion. They were so included by unanimous action of the board with full concurrence of the plaintiffs.

viii. There is not and has never been any contract, agreement, or understanding whereby defendant Raney has any control over the commissions receivable by said Holefca in connection with any pension plan.

ix. All details of said pension plan as adopted were fully and fairly explained to plaintiff Kinsey, to directors Feinberg and Krave, and to all other directors, and they all voted for the same advisedly and were not misled in any respect.

x. The plan entered into by the company on or about June 15, 1954 was parallel to the existing shop plan and was within the scope of a unanimous board resolution of May 27, 1954; was duly approved by the Treasury Department, and is in all respects valid.

xi. Under the provisions of said plan, defendants Raney and Blum cannot insist upon any right to retire and to benefit under said plan for approximately five years or until they reach the age of 70, said defendants having been more than 55 years of age at the time the plan was adopted and said plan providing in Section 2.16 thereof

> "As to any participant who is past the age of 55 years at the time of the issuance of the first policy on his life, the maximum retirement date shall be the tenth anniversary of such policy or the age of 70 years, whichever shall be the first to occur, provided however that the company shall have the option to retire any participant at any time after such participant shall have attained the age of 65 years prior to attaining the age of 70 years."

xii. Under said plan, the retirement benefits of all participants are computed by the same formula. At the time the said plan was adopted defendant Raney was receiving an annual salary of $18,600.00 and had been employed by the company for twenty years. Defendant Blum was receiving an annual salary of $7,900.00 and had been employed by the company for thirty-four years, and since the company was founded. Marion Guettler (mentioned in the latest amended complaint as being Raney's secretary), the company's office manager, was receiving an annual salary of $7,620.00 and had been employed by the company for twenty-three years. Under the terms of said pension plan as adopted, defendant Raney will receive a monthly pension of $450.00, defendant Blum $200.00, and said Guettler $200.00. None of said persons has in fact yet retired. Said pensions are merited and reasonable.

xiii. The defendant company's liability under said pension plan was thereafter noted in all its financial statements in the manner recommended by the company's auditor and by the accountants acting on behalf of the plaintiffs.

22 to 24. Denied.

25. Denied, and these defendants show that plaintiffs were not parties to said voting trust agreement and deposited no shares of stock therein; that insofar as plaintiffs afterwards purchased voting trust certificates they did so pending this suit with knowledge of all the facts and circumstances relating to said voting trust.

26 - 27. Denied.

28. For answer to paragraphs 28a and 28b, these defendants deny the allegations thereof; aver that the plaintiffs were not stockholders of record in the defendant company until after this suit was commenced; and that Bender & Company were not stockholders of record in the company prior to October 9, 1953. These defendants admit that there is no collusion between themselves and any of the plaintiffs with reference to the bringing of this suit but upon information and belief they aver that the suit is collusively brought by the plaintiffs by virtue of understandings with Charles E. Feinberg, Harry Grant, and Hugo Krave, citizens of Michigan, and with other persons and corporations whose citizenship is not known to these defendants. These defendants admit that the plaintiffs have not sought for their supposed grievances redress from the defendant company's directors or stockholders and deny that there is any reason why such relief should not have been sought.

29. Denied.

WHEREFORE these defendants pray that the latest amended complaint may be dismissed and that they may go hence with their costs to be taxed.

COUNT II

1. These defendants refer to and hereby incorporate as part of their answer to Count II all of the allegations contained in their answer to Count I ante.

2. Denied.

3. Denied, and these defendants aver that the plaintiffs, after this suit was commenced and in furtherance of their said conspiracy to acquire control of the defendant company and its assets for their own benefit, by threats, false representations, and by the offer and payment of large sums of money, did procure from certain depositors in said voting trust writings purporting to be proxies to vote at the defendant company's stockholders' meetings, assignments of voting trust certif icates, and demands for the rescission of said voting trust agreement, all of such writings being of no legal effect. Shortly before the first trial of this cause, the plaintiffs exhibited some or all of such writings to the Monroe State Savings Bank, voting trust depositary, and demanded that said voting trust be dissolved, which demand has not been complied with.

4 through 7. Denied.

WHEREFORE these defendants pray that the latest amended complaint may be dismissed and that they may go hence with their costs to be taxed.

SECOND DEFENSE

As to so much of the plaintiffs' supposed cause of action as is claimed to be derivative, the same is prosecuted in violation of Rule 23b.

THIRD DEFENSE

As to so much of the supposed cause of action as is claimed to be derivative, the plaintiffs are estopped to maintain this action by plaintiff Kinsey having voted for and consented to the corporate action in question, and plaintiffs Kunkel and Waterbury Company having so consented by said Kinsey as their agent.

FOURTH DEFENSE

As to so much of the plaintiffs' supposed cause of action as is claimed to be personal, the latest amended complaint fails to state a claim against these defendants upon which relief can be granted.

FIFTH DEFENSE

As to so much of the plaintiffs' cause of action as is claimed to be personal, no such cause of action was pleaded within the time allowed by the applicable statute of limitations.

SIXTH DEFENSE

As to so much of plaintiffs' cause of action as is claimed to be personal, plaintiffs ratified the organization of the voting trust by

their purchase of voting trust certificates and are estopped to question the validity of such trust.

DEMAND FOR JURY TRIAL

These defendants demand a trial by jury of the matters alleged in Count II of the latest amended complaint.

Dated: February 12, 1957

FISCHER, SPRAGUE, FRANKLIN & FORD

/s/ Richard Ford

/s/ Kenneth B. McConnell
Attorneys for Defendant Voting Trustees
1100 Dime Building
Detroit 26, Michigan

ANSWER OF DEFENDANTS BURTON S. KNAPP, CHARLES E. RANEY, GEORGE A. BLUM, DON B. LEATHERS AND ARTHUR W. SEMPLINER, INDIVIDUALLY AND AS DIRECTORS AND OFFICERS OF MONROE PAPER PRODUCTS COMPANY, TO THE SECOND AMENDED AND SUPPLEMENTED COMPLAINT DATED JANUARY 24, 1957

(Filed March 12, 1957)

Without prejudice to the right of the defendants to move to strike the current Amended, Supplemented and Augmented Complaint, or any part thereof, for the reason that the same is argumentative and redundant, containing such matter that is vexatious, frivolous and evidentiary in character, and in many particulars fails to comply with the Rules of Federal procedure requiring the setting forth in a single set of circumstances within a single paragraph, defendants aver:

FIRST DEFENSE

The primary purpose of the plaintiffs in instituting the present litigation is to gain control of the defendant corporation, the Monroe Paper Products Company, and not to correct the supposed and alleged wrongs recited by the plaintiffs in the Bill of Complaint.

SECOND DEFENSE

The reason the plaintiffs seek control of the defendant corporation, the Monroe Paper Products Company, is to loot said Corporation at the expense of the Corporation and its small minority stockholders, and this Court is being used in an effort to accomplish such control and looting, and not to correct the fictitious and supposed wrongs, either derivative or personal, alleged against the various defendants.

THIRD DEFENSE

The plaintiffs have failed to comply with the Federal Rules in

civil procedure, and particularly Rule 23, which provides that Complaints shall also set forth with particularity the efforts of the plaintiff to secure from the managing Board of Directors, and if necessary, from the shareholders, such action as he desires, and the reasons for his failure to obtain such action, or the reasons for his not making such effort.

FOURTH DEFENSE

The plaintiffs fail to set forth a claim or cause of action against the defendants, or any and each of them, Burton S. Knapp, Charles E. Raney, George A. Blum, Don B. Leathers and Arthur W. Sempliner, as individuals, officers or directors, upon which relief can be granted.

FIFTH DEFENSE

Plaintiffs are not original participants in the Voting Trust, but since the commencement of this litigation have acquired all their interests in said Trust with full knowledge of all the circumstances, incidents, alleged deficiencies of the said Trust, and therefore not being parties to the Trust, and having with full knowledge participated in the said Trust by having purchased an interest therein, cannot now complain with respect to any purported deficiencies of the Trust.

SIXTH DEFENSE

Plaintiffs were not stockholders of the Monroe Paper Products Company nor had any interest in the same prior to October, 1953, or at the time the alleged acts complained of were purported to have been committed.

SEVENTH DEFENSE

The action of the plaintiffs is in itself a combination in restraint of trade, in violation of the Sherman Anti-Trust Law and the Clayton Act,

Title 15 U.S.C.A. Secs. 1 to 7, and the Statutes of the State of Michigan, Act 255 of the Public Acts of 1899, M.S.A. 28.31 - 28.40 C.L. 1948, Sec. 445.701, 445.712.

EIGHTH DEFENSE

The plaintiffs have not come before this Court with clean hands, having collectively acted to confer jurisdiction upon the Court, and having breached their fiduciary duties to the stockholders and other Directors of the Monroe Paper Products Company, and at least one of the parties plaintiff was not at the time of starting suit, nor so far as is known up to the present time, a beneficial or real owner of any stock in the Monroe Paper Products Company.

NINTH DEFENSE

The plaintiffs have participated in, acquiesced, ratified and approved the acts complained of on the part of the said defendants.

TENTH DEFENSE

The matter in controversy does not arise out of the laws of the United States as cited by the plaintiffs, namely, the Sherman Anti Trust Law, 15 U.S.C.A. Sec. 1-7, the Clayton Act, 15 U.S.C.A. Sec. 12-27, and the Securities Act of 1933, 15 U.S.C.A. Secs. 77a - 77aa.

ELEVENTH DEFENSE

As to so much of the plaintiffs' cause of action as is claimed to be personal, no such cause of action was pleaded within the time allowed by the applicable Statute of Limitations.

COUNT ONE

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted, except so much thereof as restricts the business area of Monroe Paper Products Company, which is denied. Further answering said paragraph it is alleged that Monroe Paper Products Company carries on business in all parts of the United States from coast to coast, everywhere it is able to sell its products, and that some of its customers are the same corporations and customers to which the plaintiff corporation and its allied corporations and connections sell similar products.

3(a) The allegations of paragraph 3(a) are admitted except that portion alleging that Alex J. Groesbeck dominated and controlled the Monroe Paper Products Company, its officers, directors and affairs. Further answering said paragraph, it is alleged that Alex J. Groesbeck prior to his death March 10, 1953, had been ill for a considerable period of time and had not even visited the Monroe Paper Products Company or inspected its plant for a period of years, said plant being under the sole direction of the General Manager.

3(b) Defendants admit the dates of election and the order of election of said Directors, but deny any other matters contained in said paragraph, alleging that the wording of said paragraph is a distortion of the truth to the extent of a misstatement of facts. Further answering said paragraph defendants allege that as of January, 1953, the Directors of the Monroe Paper Products Company were Charles E. Raney, George A. Blum, Burton S. Knapp, Alex J. Groesbeck, Harry Grant, Don B.

Leathers, Hugo Krave and Charles E. Feinberg, a total of eight, any five of which would be a majority of the Board. That subsequent to the next annual meeting the Directors of Monroe Paper Products Company were Charles E. Raney, Hugo Krave, George A. Blum, Charles E. Feinberg, Burton S. Knapp, Harry Grant and Arthur W. Sempliner, any five of which would be a numerical majority. Further answering said paragraph defendants allege that subsequent to January, 1953, and up until the annual meeting held in September of that year, and subsequent thereto, a studied effort was made to capture control of the Monroe Paper Products Company by the use of the Groesbeck Estate stock, but this battle for control was lost, as evidenced by the action of the stockholders at the annual meeting of the stockholders in 1953.

3(c) The allegations contained in paragraph 3(c) relative to the stockholdings in Monroe Paper Products Company are admitted, except as it is alleged that these allegations of stock ownership are only a partial list, and that a full list of such stockholders would be the stock record book of Monroe Paper Products Company. Further answering said paragraph it is alleged that the stock ownership of Burton S. Knapp 375 shares, Arthur W. Sempliner 300 shares, and Ida M. Sempliner 7,203 shares, as well as the stock ownership of many other stockholders of Monroe Paper Products Company is not changed, increased or decreased to the present date, or did not change, increase or decrease for years prior to the dates therein given. Further answering said paragraph, it is alleged that if a charitable foundation invested in the common stock of Monroe Paper Products Company, such investment was an

illegal investment under the laws of the State of Michigan, and should not have been made.

4. The matters contained in paragraph 4 are denied. It is further alleged that nowhere do the records and books of the Company state a policy as set forth in paragraph 4 of the Bill of Complaint. Further answering said paragraph defendants allege that the practices of Monroe Paper Products Company have been and still are conservative, and that the Company:

(a) Pays conservative dividends
(b) Pays conservative salaries
(c) Keeps a high cash reserve
(d) Is in a sound cash position.

5. Defendants deny the matters contained in paragraph 5, particularly the allegation relative to Company policy. Defendants admit that a resolution was offered by Burton S. Knapp at the September 1952 meeting recommending an expenditure for capital improvements and replacements. Defendants further admit that the purchase of Ten Thousand (10, 000) shares of Company stock previously purchased by the Company was ratified and approved, and the officers given additional authority to purchase another Ten Thousand (10, 000) shares of stock if and when the stockholders were desirous of selling, but defendants allege that the said retirement of stock and said authority to purchase more stock was merely a means whereby stockholders would be afforded a market for their stock (said Monroe Paper Products Company stock being unlisted) only if no other market were available.

6. Defendants admit that the Company purchased 3, 329

shares of the capital stock of Monroe Paper Products Company subsequent to September 1952. Defendants have no knowledge whether Directors other than themselves purchased stock for their individual benefit in September 1952 and June 1952, and therefore leave plaintiffs to their proof.

7(a)

7(b) The matters contained in paragraphs 7(a) and 7(b), being argumentative, statements of law and not being allegations of fact, are not properly a part of these proceedings, and insofar as any statements of facts are made therein, they are denied.

8. The matters contained in paragraph 8 are denied.

9. The matters contained in paragraph 9 are denied.

10. The subject matter of paragraph 10 and the various subdivisions thereof, is denied. Further answering said paragraph defendants allege that the sole purpose of the plaintiffs in this litigation was to gain control of the defendant Corporation, Monroe Paper Products Company, for the purpose of looting the same at the expense of the small minority stockholders, and that the efforts of the plaintiffs and their collaborators and associates to accomplish this purpose, far from being the carrying out of any logical succession of any of Alex Groesbeck's theories or practices, was diametrically opposed to any such theories and practices, it always having been Groesbeck's position that all industry in which he had any part should be locally owned and locally controlled and should not be sold out to any foreign interests. Further answering said paragraph defendants allege that each and all of them at all times acted for the best

interests of Monroe Paper Products Company and its individual stockholders, and that at no time did they enter into any agreement, conspiracy or any other type of combination, as alleged in paragraph 10.

11. Defendants deny the matters alleged in paragraph 11, and deny that the interests of the Waterbury Company in purchasing the stock of Monroe Paper Products Company ceased when the National Container offer was made or was again renewed subsequent to October 1, 1953. Further answering said paragraph defendants allege that they are informed that the Waterbury offer and the National Container offer were part and parcel of a conspiracy by the fiduciaries of the Groesbeck Estate, Charles Feinberg and others, to obtain control of Monroe Paper Products Company. That these parties, including Charles Feinberg, Hugo Krave and Margaret Simmons, were in touch with the plaintiffs or their representatives on September 22, 1953, immediately prior to the annual meeting, and made arrangements for the purchase of stock of Monroe Paper Products Company, and to that end said parties, Hugo Krave and Margaret Simmons, along with others, formed an escrow agreement whereby they did purchase stock in Monroe Paper Products Company without disclosing to the sellers that said stock was being purchased by themselves as Directors, or by others in conjunction with themselves as Directors, for resale to the plaintiffs at a higher price and over-ride, all of which was inactive operation prior to September 23, 1953, and all of which included and used proxies to be voted at the annual meeting of Monroe Paper Products Company on September 23, 1953.

Further answering said paragraph defendants admit that on

or about October 9, 1953 shares purchased by the plaintiffs through the above transaction were presented to Monroe Paper Products Company for transfer and were transferred to said Bender & Company on October 21, 1953.

12. Defendants admit that on October 13, 1953 Director Harry Grant resigned, and was replaced by John P. Kinsey, who was unanimously elected as Director on the Board of Monroe Paper Products Company. Further answering said paragraph defendants allege that John P. Kinsey became, and is the owner of fifty (50) shares of stock of Monroe Paper Products Company, which fifty shares of stock were sold to him by one Charles Feinberg at a directors' meeting of Monroe Paper Products Company on October 12, 1953 so that John P. Kinsey could qualify as a Director, and that all of this was done, and John Kinsey's election to the Board was unanimously approved by all the Directors of Monroe Paper Products Company because at that time he represented that he was the owner of a large block of Monroe stock and should be represented on said Board.

13. Defendants deny the matters set forth in paragraph 13, and specifically deny that the Eastern area is a non-competitive paper area, alleging that the Eastern area is a very competitive area in the manufacture and sale of paper. Further answering said paragraph, defendants allege that Monroe Paper Products Company markets its paper both in the mid-Western and Eastern areas of the United States, and that they are in competition with paper box factories in both areas; that Monroe's customers, particularly the United States Rubber Company,

can conduct its packaging operations in either the Eastern or Western areas, and the purchasing of paper boxes in either one or the other of the areas by this customer is controlled by the competitive market.

14. Defendants deny the matters contained in paragraph 14, and all subdivisions thereof.

15. Defendants deny the matters contained in paragraph 15, and the various subdivisions thereof. Further answering said paragraph defendants allege that among the legal purposes of the Voting Trust was the protection of the minority stockholders from the fraudulent scheme to sell control of Monroe Paper Products Company to the plaintiffs so the plaintiffs could loot said Corporation.

16. Defendants admit that the Voting Trust Certificates were not registered with the Securities and Exchange Commission. All other sections of said paragraphs are denied. Further answering said paragraph said defendants allege that it was their understanding that the law did not require this type of Voting Trust to be registered with the Securities and Exchange Commission. Defendants admit that the mails were used incidental to the distribution of stock certificates, but deny that this was done with the knowledge of all Trustees, or with any intent to violate any laws of the United States.

17. Defendants admit the matters contained in paragraph 17, but deny that the plaintiffs have any right of action or cause of action by reason thereof.

18. The matters contained in paragraph 18 are denied, except defendants admit that the original Complaint was served on or

about February 3, 1954.

19. The matter contained in paragraph 19 is denied. Further answering said paragraph defendants deny that any fees paid to the defendant Sempliner were paid for any other purpose than that for which they were given, and that such payments were approved by the plaintiff Kinsey with the definite understanding that if there ever was any objection to the payment, or any doubt as to why it was made, the payment would not be made until the termination of this litigation. Further answering said paragraph defendants are informed, and therefore allege, that insofar as the derivative part of this litigation is concerned, that the attorney fees heretofore paid to the attorneys for the plaintiffs range upward from $25,000.00, and that said attorneys do not depend upon attorney fees to be paid out of any recovery in the derivative part of this action, having heretofore been paid by the plaintiffs, as aforesaid.

20. Defendants deny the allegations contained in paragraph 20, and the various subdivisions thereof. Further answering said paragraph said defendants allege that Charles Raney, as Vice President and General Manager of Monroe Paper Products Company is a skillful, well-qualified paper man, who has been with Monroe Paper Products Company since 1934. That during the time he has been with Monroe Paper Products Company the Company has progressed from a Company that was in receivership without sufficient funds to meet its payroll, to a Company in its present condition, with large bank deposits and in a fine cash position.

Further answering said paragraph 20 defendants allege

that despite increased costs brought about by changing times, the Monroe Company Balance Sheet is in approximately the same position as it was in 1953 despite having to pay high wages and increased material cost in a very competitive industry.

21. Defendants deny the matters contained in paragraph 21 and all subdivisions thereof. Further answering said paragraph said defendants allege that it has long been the practice of the Monroe Company to grant salary increases and similar working conditions to salaried employees as were granted to the Unionized hourly employees, and that these practices had been carried out in granting pensions to the salaried employees at approximately the same time that pensions were granted to the hourly employees. Further answering said paragraph, defendants allege that the Consultant who worked on and detailed the pension plans that were instituted, namely Daniel Holefca, had been recommended by the former President of the Corporation Alex Groesbeck, because he had worked on similar pension plans for the Michigan Life Insurance Company. That all pension plans finally adopted by the Monroe Paper Products Company were adopted with the unanimous consent of all members of the Board of Directors after full explanation, and that the plaintiff John P. Kinsey had served on a Pension Committee of the Board, and as such had ample opportunity to study and participate in the formation of said pension plan; that particularly the question had been raised as to whether Raney and Blum should be included in the salaried pension plan, and that the decision was made in the open Board of Directors meeting at which the plaintiff John P. Kinsey was present, and they were included without

the objection of Kinsey, who voted for the same after their inclusion in the said plan.

22, 23, 24, 25 Defendants deny the matters set forth in paragraphs 22, 23, 24 and 25. Further answering paragraph 25, defendants allege that the plaintiffs were not original parties to said Voting Trust Agreement, and only became owners of Voting Trust Certificates after the commencement of this litigation, becoming such owners with full knowledge of all the alleged imperfections contained in their Bill of Complaint, thus adopting and ratifying the same.

26, 27 Defendants deny the matters contained in paragraphs 26 and 27.

28, 28(a), 28(b) Defendants deny the matters contained in paragraphs 28, 28(a) and 28(b).

29. Defendants deny the matters contained in paragraph 29.

WHEREFORE said defendants pray that this Honorable Court will:

A. Enter a Decree in the above entitled cause dismissing the current Amended and Supplemented Complaint as to the defendants Burton S. Knapp, Charles E. Raney, George A. Blum, Don B. Leathers and Arthur W. Sempliner.

B. To declare the acts of the plaintiff the Waterbury Container Company, John P. Kinsey and Lawrence Kunkel in acquiring the shares of the Monroe Paper Products Company illegal, in violation of the laws of the State of Michigan and the laws of the United States and contrary to the fiduciary duties of Kinsey as a Director.

C. Order a temporary and permanent restraining Order restraining and enjoining the plaintiffs John P. Kinsey, Lawrence G. Kunkel and the Waterbury Corrugated Container Company from acquiring or purchasing further shares of stock of the Monroe Paper Products Company or using their position to the detriment of Monroe Paper Products Company.

D. Hold the plaintiffs John P. Kinsey, Lawrence G. Kunkel and Waterbury Corrugated Container Company, individually and as stockholders and directors of Monroe Paper Products Company, liable to the Monroe Paper Products Company for all costs and expenses in this litigation, and other expenses incurred as a result of their illegal actions.

E. Remove John P. Kinsey as a Director of Monroe Paper Products Company.

F. Require the plaintiffs John P. Kinsey, Lawrence G. Kunkel and Waterbury Corrugated Container Company, and their assistants and subsidiaries to forthwith dispose of their interests and stock in the Monroe Paper Products Company in blocks not to exceed 5,000 shares each, and to such persons or parties as will have the approval of this Court.

G. That said defendants may have such other, further and different relief in the premises as to this Court may seem meet and equitable.

COUNT TWO

1. As to the matters contained in paragraph 1 of Count Two, defendants answer the allegations contained therein as answered in Count One above.

2. Defendants deny the matters contained in paragraph 2.

3. Defendants deny the matters contained in paragraph 3. Further answering said paragraph defendants deny that the acts of the plaintiffs were to protect their investment, and allege that it was the intention and studied practice of the plaintiffs to acquire as much additional stock of Monroe Paper Products Company as they could acquire to obtain 51% of Monroe Paper Products Company stock for the purpose of obtaining control of the same and for the purpose of looting the treasury of Monroe Paper Products Company, all as set forth in previous paragraphs.

4. The matters contained in paragraph 4 are denied. Further answering said paragraph defendants allege that it was the practice of plaintiffs to acquire additional stock of Monroe Paper Products Company at whatever price was necessary to acquire the same, all of which was in conspiracy with their co-conspirators above described, entered into prior to September 1953 and continuing to the present time.

5. The matters contained in paragraph 5 are denied. Further answering said paragraph, defendants are informed and believe that the Attorneys for plaintiffs herein have received upwards of $25,000.00 in Attorney fees, if not more. That these fees have been received as a part of their compensation for assisting plaintiffs in

attempting to gain control of Monroe Paper Products Company. These Attorneys do not look for any recovery from the derivative or other phase of the litigation from which to obtain their fees.

6 - 7 The matters contained in paragraphs 6 and 7 are denied.

WHEREFORE defendants pray that the supplemental, amended and all other Complaints be dismissed, and that defendants be granted such relief as heretofore prayed for under Count One.

COUNTER-CLAIM

1. Defendants and cross plaintiffs are residents of the State of Michigan and the Eastern District of Michigan, Southern Division.

2. That the plaintiffs and cross defendants Waterbury Corrugated Container Company, John P. Kinsey and Lawrence G. Kunkel, as appears from the plaintiffs' Complaint, appear to be respectively a Connecticut corporation and citizens of Connecticut.

3. Monroe Paper Products Company is a Michigan corporation located in Monroe, Michigan, manufacturing paper and fabricated paper boxes for sale in the midwestern States and along the Eastern seaboard.

4. For a long period of time there were no large stockholders in Monroe Paper Products Company, and it had in excess of 400 small stockholders, largely situated in the County of Monroe and State of Michigan, though approximately 10% of the total number of

stockholders were scattered through the United States. That commencing approximately the year 1950 a group of individuals, headed by Charles Feinberg, entered into a conspiracy to acquire control of Monroe Paper Products Company for their own purposes and interests to the detriment of the general stockholders of Monroe Paper Products Company. That it was their intention in carrying out their various plans to gain control of Monroe Paper Products Company, use its funds and assets for their own purposes and eventually, by depressing the value of the stock of Monroe Paper Products Company, to acquire a substantial interest to elect themselves officers and thus obtain high salaries. To carry out the conspiracy to gain control of Monroe Paper Products Company they convinced the President, Alex J. Groesbeck, to allow them to be elected to the Board of Directors, to allow other corporations in which he was interested, including charitable trusts, to purchase stock in Monroe Paper Products Company in order to acquire a sufficient block of stock to control said Company.

5. That in 1951, due to the sale of one of the Companies, the Argo Oil Company, a subsidiary of which, the Automatic Heating and Cooling Company, had a substantial block of stock in Monroe Paper Products Company amounting to 5,826 shares, and without the knowledge of the stockholders of the Argo Oil Company, who had been induced to sell their stock in the Argo Oil Company, they purchased at below market, namely $5-1/2 a share, on April 23, 1951, and then distributed the same to themselves and to other parties.

6. Throughout the years between 1950 and 1953 the same

group of conspirators continued to use the assets of Monroe Paper Products Company for their own purposes and to acquire additional stock in Monroe Paper Products Company for the purpose of eventually gaining control of Monroe Paper Products Company.

7. In the Summer of 1953, subsequent to the death of Alex J. Groesbeck, President of Monroe Paper Products Company, they attempted to gain control of Monroe Paper Products Company contrary to the wishes of the majority of the Board of Directors, and on their failure to do so, attempted to enlarge the use and obtain further funds with which to gain control of the Company.

8. Failing to accomplish this end, they enlisted the support of Thomas Griffin, the former legal counsel of Monroe Paper Products Company, and attempted to solicit other parties to join with them in their conspiracy.

9. Failing to obtain sufficient stock to pool with their stock and obtain control of Monroe Paper Products Company with the National Container Corporation, they were able to induce the plaintiffs and cross defendants herein to obtain sufficient funds to purchase all available stock on the market and thus to obtain control of Monroe Paper Products Company. The plaintiffs and cross defendants herein were able to obtain and interest the Waterbury National Bank and the Chase National Bank in this nefarious conspiracy, and through a loan of in excess of half million dollars they were able to purchase in excess of 40% of the stock of Monroe Paper Products Company.

10. In furtherance of their conspiracy they placed an order

with a broker by the name of Stiglitz & Co., to purchase an additional 10,000 shares of Monroe Paper Products Company stock, until they had better than 51% of the stock of Monroe Paper Products Company, and in continuance of this plan they are still purchasing on the open market and by whatever means they can, stock or other evidence of interest in stock of Monroe Paper Products Company. That the parties engaged in said conspiracy to accumulate controlling interest in the stock of Monroe Paper Products Company were, among others, Charles Feinberg, a director of Monroe Paper Products Company, Hugo Krave, a director of Monroe Paper Products Company, John P. Kinsey, a director of Monroe Paper Products Company, Lawrence G. Kunkel, a plaintiff herein, Waterbury Corrugated Container Company, a plaintiff herein, various officers of Waterbury Corrugated Container Company, and their banking connections, and others known to your cross plaintiffs. That the actions of John P. Kinsey, Charles Feinberg, Hugo Krave and others as directors of Monroe Paper Products Company, in accumulating a large block of stock for sale to a foreign corporation, and the using of their position as directors of Monroe Paper Products Company, and the knowledge they obtained as directors of Monroe Paper Products Company, was contrary to their fiduciary duties and ultra vires to their position as Directors of Monroe Paper Products Company, and a fraud upon the stockholders. In the furtherance of their conspiracy plaintiffs obtained the services of Thomas Griffin, former general counsel of Monroe Paper Products Company, who rendered them substantial services for months previous to February 1954 without charge, and in February 1954

said parties placed Griffin on a retainer of $250.00 per month.

11. That the purpose of accumulating such a block of stock and control was to make the balance of the stock of lesser value and of small import in the voting of stockholders of the Company, and thus be able to purchase said stock at a depressed price, and therefore such action on the part of the stockholders was illegal and a fraud upon the stockholders of Monroe Paper Products Company.

12. That a further purpose in gaining control of Monroe Paper Products Company was to loot the treasury of Monroe Paper Products Company, which in September of 1953 contained a million dollars in cash, and with such cash to repay the loan they had made from the Chase National Bank, the proceeds of which were used to purchase large blocks of stock in Monroe Paper Products Company.

13. That throughout the pre-trial depositions, particularly the depositions of the Chase National Bank, counsel for the plaintiffs and cross defendants herein, as evidence of the conspiracy and their influence upon Chase National Bank, Stiglitz & Co., and the Waterbury National Bank, and others, have given instructions to these parties and their agents testifying at the depositions, which instructions have been obeyed, and have had free access to the files of these parties, which access would not be given if these parties themselves were not a party to and part of the conspiracy.

14. That the plaintiff and cross defendant The Waterbury Corrugated Container Company is associated with Franklin Paper Company, a wholly owned subsidiary, and Housatanic Corrugated Box Company, and

that these companies have interlocking directorates of which plaintiffs and cross defendants, John P. Kinsey and Lawrence G. Kunkel are, among others, interlocking directors and officers.

15. That one of the purposes for which the cross defendants herein joined in the conspiracy to obtain control of Monroe Paper Products Company was for the purpose of controlling the sales of Monroe Paper Products Company's products so that any time, at their desire, they might force the Monroe Paper Products Company to sell its products to them to the exclusion of other customers and the detriment of Monroe Paper Products Company.

16. That the acts of the plaintiffs and cross defendants herein are in violation of the Federal Statute and particularly the Sherman Anti Trust Act, 15 U.S.C.A. Secs. 1-7, and the Clayton Act, 15 U.S.C.A. Secs. 12-27, and also in violation of Michigan Statutes pertaining to restraint of trade, C.L. 1948 Sec. 445-701, 445-712, M.S.A. 28.31 - 28.40.

17. That the plaintiff and cross defendant Waterbury Corrugated Container Company, in acquiring stock of Monroe Paper Products Company, acted in violation of the Internal Revenue Code, Sec. 26 U.S.C.A. Sec. 102, in that they have acquired the same for no lawful purposes of their corporations, and have accumulated an unreasonable surplus of funds which should have been distributed as dividends and taxed accordingly.

18. That this litigation under the subterfuge of a derivative action, was instituted by the plaintiffs for the furtherance of their

conspiracy, and defendants say on information and belief that as a part of said conspiracy it was arranged that counsel for the plaintiffs would be paid substantial sums of money as legal fees, not based upon any recovery in the purported derivative action, and that said plaintiffs, or some of them, have paid said counsel in excess of Twenty Five Thousand Dollars ($25,000.00).

WHEREFORE defendants and cross plaintiffs pray Judgment:

A. That the Court enter a Decree in the above entitled cause dismissing said Amended and Supplemented Complaint as to the defendants Burton S. Knapp, Charles E. Raney, George A. Blum, Don B. Leathers and Arthur W. Sempliner.

B. That the Court declare the acts of the plaintiffs Waterbury Corrugated Container Company, John P. Kinsey and Lawrence G. Kunkel in acquiring the shares of Monroe Paper Products Company stock illegal, in violation of the laws of the State of Michigan, and the laws of the United States, and contrary to the fiduciary duties of Kinsey as a Director.

C. That the Court issue a temporary and permanent restraining Order restraining and enjoining plaintiffs John P. Kinsey, Lawrence G. Kunkel and the Waterbury Corrugated Container Company, from acquiring or purchasing further shares of stock of Monroe Paper Products Company or using their position to the detriment of Monroe Paper Products Company.

D. Hold the plaintiffs John P. Kinsey, Lawrence G. Kunkel and Waterbury Corrugated Container Company, individually and as

stockholders and directors of Monroe Paper Products Company, liable to Monroe Paper Products Company for all costs and expenses in this litigation and other expenses incurred as a result of their illegal actions.

E. To remove John P. Kinsey as a Director of Monroe Paper Products Company.

F. To require plaintiffs and cross defendants John P. Kinsey, Lawrence G. Kunkel and Waterbury Corrugated Container Company, and their assistants and subsidiaries to forthwith dispose of their interests and stock in Monroe Paper Products Company in blocks not to exceed 5,000 shares each, and to such persons or parties as will have the approval of this Court.

G. Requiring that the plaintiffs and cross defendants herein John P. Kinsey, Lawrence G. Kunkel, individually and as directors and stockholders of Monroe Paper Products Company, and individually and as officers and directors of Waterbury Corrugated Container Company, a Connecticut corporation, and their subsidiary companies, disclose all acts and doings by them individually and otherwise in respect to purchase of stock of Monroe Paper Products Company, Voting Trust Certificates of Monroe Paper Products Company, or any other interests in Monroe Paper Products Company in their attempts to gain control of Monroe Paper Products Company, and that they disclose all memorandum, communications, and other documents sent by them to the officers, stockholders, and directors of the Monroe Paper Products Company in their individual or any other capacity.

H. That said defendants and cross plaintiffs have such other, further and different relief in the premises as to this Court may seem meet and equitable.

Arthur W. Sempliner (signed)

Arthur W. Sempliner
Attorney for Burton S. Knapp, Charles E. Raney, George A. Blum, Don B. Leathers, and Arthur W. Sempliner, individually and as Directors and stockholders of Monroe Paper Products Company

DATED: March 12, 1957

BUSINESS ADDRESS:
2006 Dime Building
Detroit 26, Michigan
WO. 1-2940

(Sworn)

AMENDED DEMAND FOR JURY TRIAL

(Filed March 22, 1957)

Now come defendants BURTON S. KNAPP, CHARLES E. RANEY, GEORGE A. BLUM, DON B. LEATHERS and ARTHUR W. SEMPLINER, individually and as Directors and Stockholders of Monroe Paper Products Company, by Arthur W. Sempliner, their Attorney, and pursuant to the Federal Rules of Civil Procedure, Rule 38, demand a trial by jury of the issues and the damages thereunder alleged in plaintiffs' Complaint which have arisen under the Sherman Anti Trust Law, the Clayton Act, and such Sections of the Michigan Compiled Laws as are made reference to in Count II. of plaintiffs' Amended, Supplemented and Augmented Complaint dated January 24, 1957.

Dated at Detroit, Michigan, this 22nd day of March, 1957.

Arthur W. Sempliner (signed)

Arthur W. Sempliner
Attorney for defendants
Burton S. Knapp, Charles E. Raney,
George A. Blum, Don B. Leathers and
Arthur W. Sempliner, individually and
as Directors and Stockholders of
Monroe Paper Products Company

BUSINESS ADDRESS:
2006 Dime Building
Detroit 26, Michigan
WO. 1-2940

PLAINTIFFS' ANSWER TO SECOND AMENDED COUNTERCLAIM OF DEFENDANTS KNAPP, RANEY, BLUM, LEATHERS AND SEMPLINER DATED MARCH 12, 1957

(Filed April 9, 1957)

FIRST DEFENSE

The counterclaim fails to state a claim against plaintiffs upon which relief can be granted.

SECOND DEFENSE

Defendants have failed to comply with Rule 23(b), Federal Rules of Civil Procedure.

THIRD DEFENSE

There is and has been no competition between the defendant corporation and the plaintiff corporation, its affiliates, or any corporation in which the individual plaintiffs are directors or interested.

FOURTH DEFENSE

Plaintiffs violated no fiduciary duty to defendants, or any of them, in acquiring stock in defendant corporation.

FIFTH DEFENSE

Plaintiffs are not proper parties to the alleged separate controversy between individual defendants and directors Feinberg and Krave.

SIXTH DEFENSE

Defendants are estopped from complaining of plaintiffs' purchases of Monroe Company stock and of the other directorships held by plaintiff Kinsey, because they and other officers, directors and stockholders of Monroe Company have purchased Monroe Company stock for

the purpose of seizing and maintaining control of said company, have attempted to monopolize said stock, to fix the price and prevent the sale thereof, to secure ratification and continuance of the directorship of defendant Leathers notwithstanding his unlawful interlocking directorship in one of the Monroe Company's closest and largest competitors, have used the funds and facilities of the Monroe Company to make said purchases and to attempt said monopoly and said ratification and continuance, and have elected said Kinsey a director of Monroe Company knowing of his connection with Waterbury Company.

SEVENTH DEFENSE

Defendants are merely seeking to divert attention from, screen and attempt to excuse the breaches of their fiduciary duties to defendant corporation and to forestall accountability therefore.

EIGHTH DEFENSE

(a) The allegations of paragraphs 1 and 2 are admitted.

(b) The allegations of paragraph 3 are admitted except that it is denied that the Monroe Company manufactures for sale along the Eastern seaboard.

(c) Plaintiffs have no knowledge or information sufficient to form a belief as to the allegations of the first sentence of paragraph 4; the remaining allegations of paragraph 4 are, upon information and belief, denied.

(d) Plaintiffs have no knowledge or information sufficient to form a belief as to the allegations of paragraph 5 except that they are informed and believe that on or after April 23, 1951, 5,826 shares of

Monroe Company stock which said Groesbeck had purchased from a division of Argo Oil Company were resold at the same price ($5.50) to eight persons, who included the present company attorney and defendant Raney, and to the defendant corporation.

(e) The allegations of paragraphs 6, 7 and 8 are, upon information and belief, denied.

(f) The allegations of paragraph 9 are denied except that plaintiffs admit that on or about October 1, 1953, plaintiffs purchased approximately 40% of the Monroe Company stock as alleged in their Amended and Supplemented Complaint and borrowed less than a half million dollars from the Waterbury National Bank in so doing.

(g) The allegations of paragraph 10 are denied except that plaintiffs admit that on or about February 1, 1954, after discovery of, and as a protection against, the voting trust herein, plaintiff Waterbury Co. offered to purchase from broker Stiglitz & Co. an additional 10,000 shares of Monroe Company stock and that said Waterbury Co. purchased Monroe Paper Products Company stock and other evidence of interest therein upon the open market and that plaintiffs admit that they were informed of the voting trust by Thomas E. Griffin and in February 1954 plaintiff Waterbury employed said Griffin for $250 per month to keep it informed of all developments in Monroe.

(h) The allegations of paragraphs 11, 12 and 13 are denied.

(i) The allegations of paragraph 14 are admitted.

(j) The allegations of paragraphs 15, 16, 17 and 18 are denied.

WHEREFORE it is prayed that said counterclaim be dismissed with costs.

Dated April 9, 1957

/s/ George E. Brand

/s/ George E. Brand, Jr.

Attorneys for Plaintiffs Cross Defendants
3709-23 Cadillac Tower
Detroit 26, Michigan

PLAINTIFF'S REQUESTS FOR ADMISSIONS OF FACT

(Served September 18, 1956)

* * *

13. The following occurred at meetings of Monroe's stockholders or directors in respect to the purchase of its shares for retirement:

(a) Directors Meeting, June 7, 1941

"Mr. Raney also reported * * * that stock of the Company purchased in 1941 amounts to 1667 shares, at a cost of $3,724.94; that the Company now holds Treasury stock totalling 2460-1/2 shares, at a cost of $5,748.04."

(b) Directors Meeting, December 5, 1941

"General Manager Raney reported * * * that under the general policy approved by the Board of Directors, that the company had purchased 5,486 shares of the company's common stock, ranging in price from $2.25 to $3.00. It was unanimously resolved that the General Manager of the company be authorized to purchase stock of the company in an amount sufficient to reduce the total outstanding stock to an even 200,000 shares and to confirm and approve purchases of the company's stock made to date by the officers."

(c) Stockholders Meeting, September 10, 1946

"Stockholder Rath asked the reason for the reduction of outstanding capital stock to 200,000 shares. The Chairman replied that the Directors felt that in reducing this outstanding stock to an even 200,000 shares which was purchased in small lots as offered to the public at the price 1-1/2 to 2-1/2, this increased the equity of the remaining stockholders. This stock was purchased as Treasury stock and no dividends paid on same."

(d) Directors Meeting, April 11, 1951

"The next item discussed was the purchase by the Company of 6,073 shares of Monroe Paper Products Company stock at a total of $27,554.35, or an average price of $4.53719 per share. Disposition of same was deferred until a later Directors Meeting."

(e) Directors Meeting, September 26, 1951

"On motion of Mr. Knapp, supported by Mr. Grant, the purchase of 9864 shares of Company stock was unanimously approved -- the total cost being $51,564.76, or an average of $5.227 a share. This stock has been transferred to treasury stock, which reduces the total number of outstanding shares to 190,136."

(f) Stockholders Meeting, September 25, 1952

"The President reported that the outstanding stock of the Company had been reduced to approximately 190,000 shares and that there were 10,000 shares in the Treasury that ought to be retired. President Groesbeck further stated that he thought when shareholders offer stock for sale to the Company that the Company should be able to deal with them and that two Resolutions had been prepared to cover these matters.

"The following Resolution was then offered by Mr. Krave, seconded by Mr. Grant:

"'Resolved, that the action of the officers of the Company in purchasing ten thousand (10,000) shares of its capital stock for retirement purposes is approved, and said stock retired, without authority of the officers or directors of the Company to repurchase or continue the same as an asset of the corporation, thereby reducing the authorized capital stock from Three Hundred Thousand ($300,000.00) Dollars to One Hundred Ninety Thousand ($190,000.00) Dollars, represented by One Hundred Ninety Thousand (190,000) shares of One ($1.00) Dollar Par Value.'

"Adopted unanimously.

"Mr. Krave offered another Resolution, which was seconded by Mr. Feinberg, reading as follows:

"'Resolved, that the officers of this Company are herewith authorized to purchase on behalf of the Company not to exceed an additional ten thousand (10,000) shares of its stock at the market price if and when any of its stockholders are desirous of selling and voluntarily offer same for sale, thus affording, if they desire, a market for them at current prices.'

"This Resolution was unanimously adopted."

* * *

(Excerpts from Plaintiffs' Requests for Admissions of Fact)

357. The November 24, 1953 inter-office memorandum of Clark, Klein, Brucker & Waples accurately states the information communicated to them by Raney and the objectives of their employment.

* * *

466. Voting trust agreements or counterparts were at no time signed by stockholders as to more than 15,214 shares of Monroe stock.

467. Signature sheets for Voting Agreement were at no time signed by stockholders as to more than 81,914 shares of Monroe stock.

* * *

491. By March 2, 1954 the number of shares of stock deposited under the voting trust agreement was approximately 72,000.

492. Additional shares were deposited under the voting trust agreement subsequent to March 2, 1954.

493. Between March 9 and April 26, 1954 the Monroe State Savings Bank, as depositary, issued 69 additional voting trust certificates for more than 23,000 shares of Monroe stock.

* * *

515. On February 8, 1954 less than one-half of the minimum amount of stock necessary to put the voting trust into effect had been deposited with Monroe State Savings Bank.

516. On February 8, 1954 voting trust certificates had been issued as to less than one-half of the minimum amount of stock necessary to put the voting trust into effect.

* * *

747. From October 1, 1953 to November 19, 1954 the arrangement made by Raney as to the furnishing of waste paper materials by Thomas Paper Stock Company to Monroe was:

(a) No definite orders were given by Monroe or accepted by Thomas and neither company was legally obligated to ship or to receive.

(b) Thomas was to ship until Monroe "hollered".

(c) Substandard materials furnished by Thomas were to be accepted by Monroe at a downgraded classification and price.

(d) The expense of inspection and downgrading was to be borne by Monroe.

(e) Cars containing various grades of materials would be accepted by Monroe.

(f) Thomas was to be paid $50 a ton for all kraft.

* * *

(Excerpts from Defendants' Answer to Requested Admissions)

DEFENDANTS' FURTHER REPLY TO PLAINTIFFS' REQUEST FOR ADMISSIONS

(Filed Feb. 6, 1957)

Objections having been filed to some of the plaintiffs' requests for admissions of fact; and some of said objections having been overruled by the court; and the defendants now saving and reserving unto themselves the benefit of said objections, consolidate their earlier answers herein and further answer said requests as follows:

* * *

ADMITTED IN PART AND DENIED IN PART

* * *

13. Denied except as follows: That from some time before 1941 directors of defendant company from time to time bought stock in defendant company for their own account; that during the same period and from time to time they caused defendant company to buy and retire its own stock when and as necessary to assist stockholders in disposing of their holdings, the stock not being listed or actively traded in; that such course of dealing appears in part from certain excerpts from the minute book, as quoted in said request; that from and after September 25, 1952 there was never any directive from the company to any of its directors or officers to acquire any stock for the company except to afford stockholders a market; that from and after March 10, 1953 directors Feinberg, Grant and Krave actively sought out and purchased stock for their own accounts; that Vogel & Company, Stieglitz & Company, William M. Fleishman, Thomas E. Griffin, Rolland A. Meier and others campaigned for the purchase of stock;

that thereby an active market for the stock was produced and existed; that directors Feinberg, Grant, and Krave protested against any stock being purchased by the company and threatened litigation if the same should be attempted; that on or about September 23, 1953 at the annual shareholders' meeting the following occurred:

> "The President placed before the Meeting the matter of reducing the number of shares of the Company's outstanding stock to 150,000 shares. Discussion was had in respect thereto.
>
> In response to a question from Mr. Feinberg, a stockholder, as to the cost of stock previously purchased pursuant to the resolution of the Board of Directors, Mr. Raney replied that he did not have the cost figures of the stock at the meeting and could not give an exact answer. No action was taken on this matter of purchasing additional stock so as to reduce the number of shares outstanding to 150,000 shares"

and that from and after October 13, 1953 plaintiff Kinsey, being a director of the company, campaigned for the purchase of stock for himself and his associates.

* * *

357. Denied except as follows: That on December 20, 1953 Raney conferred with Gerald Stoetzer as to various matters, including ways and means by which the majority of the stockholders could prevent their stock from becoming of little value in the event control of the company should pass into dishonest hands; also, as to measures that would permit a majority of the stockholders to join in a possible sale of their stock at a reasonable price; that thereafter on December 24, 1953 Stoetzer prepared trial exhibit 223; that said exhibit contains certain information and omits

certain other information furnished him by Raney at their earlier conference.

* * *

466 and 467 are severally denied except as follows: That stockholders made themselves parties to the voting trust by different methods; by signing the voting trust agreement or by signing and delivering a short-form card indicating their adherence to the voting trust agreement; and/or by exchanging stock certificates for voting trust certificates; and that from and after February 1, 1954 the owners of a majority of all outstanding stock had made themselves parties to the voting trust agreement.

491, 492, and 493 are severally denied except as follows: That certain stockholders who had by written agreement become parties to the voting trust prior to February 9, 1954 thereafter during March and April, 1954 physically delivered their stock to the bank receiving in exchange therefor their earlier proportionate commitment of voting trust certificates.

* * *

515 and 516. Denied except as follows: That at least a week prior to February 8, 1954 the voting trust agreement was in effect as over 80% of all Monroe stockholders owning in excess of 50% of its stock had then subscribed in writing thereto. Thereafter certain of these subscribing stockholders brought these shares of stock into the Monroe bank and exchanged them for voting trust certificates, all pursuant to their earlier binding agreement.

* * *

(Excerpts from Defendants' Answer to Requested Admissions)

747. Denied except as follows: That beginning about October 1, 1953 it appeared to defendant company and its management that the trend in customers' specifications was such that the company would require more kraft than formerly; that it likewise appeared probable that the market price of waste paper would increase so that it would be advantageous to the company to increase its waste paper inventory; that the Thomas Paper Stock Company's method of operation was that by mail, telephone or telegraph it purchased stocks of baled waste paper at points throughout the country and ordered them shipped to its customers without itself seeing the material; that defendant company arranged with said Thomas that said Thomas would supply kraft to defendant company in quantity at $50.00 per ton delivered in Monroe, that being a price below the national market and the best price which defendant company was able to obtain; that Thomas should cause such material to be shipped from time to time from point of origin as it should be available, until defendant company should order otherwise; that defendant company would inspect all income shipments in accordance with the usage of the trade; that if on such inspection any of the material should be found unacceptable as kraft it would be reclassified by defendant company and paid for according to its true value; that the parties had previously dealt with each other satisfactorily on substantially this basis over many years; that on this basis throughout the year following October 1, 1953 the defendant company was able to obtain from Thomas its requirements of kraft and to accumulate a substantial inventory at advantageous prices; and that the market price of wast paper having trended upward, the defendant company's inventory appreciated in value at least $25,000.

* * *

(Excerpts from Plaintiffs' Requests for Admissions of Fact)

State of Michigan)
) ss.
County of Wayne)

Charles E. Raney, being first duly sworn, deposes and says:

1. I am one of the defendants in this action. I have read the plaintiffs' requests for admissions of fact and the foregoing response thereto.

2. As to those matters which are denied in the foregoing response or which are partly admitted and partly denied therein, I have personal knowledge of some of such matters and I have discussed the other matters with the other defendants and with such witnesses as are known to me, to the other defendants, or to the defendants' attorneys, and I verily believe all such denials to be according to the fact.

3. As to those matters in the foregoing response which are neither admitted nor denied for want of knowledge or present recollection, I have no knowledge or information sufficient to form a belief. I have discussed such matters with the other defendants and with such witnesses as are known to me, to the other defendants, or to the defendants' attorneys, and I have been unable to gather sufficient information to form any belief.

/sgd/ Charles E. Raney

Dated February 6, 1957

(Sworn)

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO THE VOTING TRUST AND NOTICE OF HEARING

(Filed June 11, 1957)

Plaintiffs move the Court to enter Partial Summary Judgment for plaintiffs determining and adjudicating that plaintiffs are entitled to partial summary judgment and granting permanent injunctions:

(a) Restraining and enjoining defendants Knapp, Raney, Blum, Leathers and Sempliner, as trustees under the Voting Trust Agreement dated December 31, 1953 (Exhibit 1 to Complaint - As Amended and Supplemented) and otherwise, and defendant Huber, individually and as Chairman of the Stockholders' Committee, from carrying out said voting trust agreement, from soliciting deposit of stock thereunder and said voting trustees, as such trustees, from voting any of the deposited stock and requiring that said defendants Knapp, Raney, Blum, Leathers and Sempliner cancel all deposits of stock made under said voting trust agreement, recall all voting trust certificates issued thereunder and return all deposited stock to the depositing stockholders including 11,797-1/2 shares of which plaintiff Waterbury Corrugated Container Company is assignee and transferee.

(b) Restraining and enjoining defendant Monroe Paper Products Company and its directors and officers from recognizing said voting trust agreement, from transferring any stock to the voting trustees, the depositary named in said agreement or any nominee of either thereof, and from permitting said trustees, depositary or nominee, or any of them, to vote any of said deposited

stock,

all for the, and each of the, following reasons:

1. The voting trust certificates issued and to be issued under said voting trust agreement were and are securities (15 USC § 77b(1)), the procurement of deposits of stock under said agreement and the issuance of voting trust certificates therefor constituted offers to sell, offers for sale and sales of such securities (15 USC § 77b(3)), and the voting trustees and their depositary and agent under said agreement were issuers of such securities (15 USC § 77b(4)), all within the intendment, contemplation and scope of the Securities Act of 1933 (15 USC §§ 77a-aa).

2. The defendant voting trustees and their agents and defendant Huber unlawfully used and caused to be used the mails and the means and instruments of transportation and communication in interstate commerce to sell and to buy said securities, and carried and caused to be carried such securities through the mails and in interstate commerce by means of instruments of transportation for the purpose of sale and delivery after sale, all without a registration statement being in effect as to said securities as required by the Securities Act of 1933 (15 USC § § 77e(a)(1) and (2)).

3. The, and each of the, letter from the defendant voting trustees and their agents and defendant Huber to the stockholders of the Monroe Paper Products Company dated as of December 31, 1953 (Exhibit 2 to Complaint - As Amended and Supplemented), the list enclosed therewith (Exhibit 3 to said Complaint), the letter to said stockholders dated February 1, 1954 (Deposition Exhibit 3), the letter dated February 8,

1954, to Mrs. Florence B. Willemin of Fort Worth, Texas (Deposition Exhibit 27), the telegram dated January 24, 1954 to Otto C. Bodamer, of St. Petersburg, Florida (Deposition Exhibit 21), the letter dated January 12, 1954 to Arthur G. Knierin, of Toledo, Ohio (Deposition Exhibit 20), the letter dated January 25, 1954 to Lewis and Hutchinson, of Camden, New Jersey (Deposition Exhibit 41A) and other related correspondence and telegrams soliciting deposit of stock under the voting trust agreement, constituted prospectuses within the intendment, contemplation and scope of the Securities Act of 1933 (15 USC § 77(b)(10)), which prospectuses did not meet the requirements of said Securities Act (15 USC § 77j(a)(1), § 77j(b)(3) and § 77j(c)).

4. The defendant voting trustees and their agents and defendant Huber unlawfully used and caused to be used the mails and the means and instruments of transportation and communication in interstate commerce to carry and transmit the prospectuses referred to in division 3, ante, contrary to the Securities Act of 1933 (15 USC § 77e(b)(1)).

5. The defendant voting trustees and their agents and defendant Huber unlawfully carried and caused to be carried through the mails and in interstate commerce the voting trust certificates for the purposes of sale and for delivery after sale without said certificates being accompanied or preceded by a prospectus that met the requirements of 15 USC § 77j, all contrary to the Securities Act of 1933 (15 USC § 77e (b)(2)).

6. The use by the defendant voting trustees and their agents and defendant Huber of the mails and means and instruments of transpor-

tation and communication in interstate commerce to carry and transmit the letter to the stockholders of the Monroe Paper Products Company dated as of December 31, 1953 (Exhibit 2 to Complaint - As Amended and Supplemented) and the list enclosed therewith (Exhibit 3 to said Complaint) and the letter to said stockholders dated February 1, 1954 (Deposition Exhibit 3) were unlawful and in violation of the Securities Act of 1933 (15 USC § 77q). The Securities Exchange Act of 1934 (15 USC § 78j), Rule X-10 B-5 of the Securities and Exchange Commission and the Mail Fraud Act (18 USC § 1341) in that:

(a) Said letter dated December 31, 1953 and said list were fraudulent and contained and constituted the misrepresentation that the listed stockholders had already signed the voting trust agreement and had subjected their shares thereto, whereas they had not. They did not disclose the purchases of the 15,538 shares at $10 per share by Raney, Blum, Leathers, company employees and suppliers and others through the escrow arrangement and the intent that such shares be deposited under the voting trust agreement nor that a majority of those listed as signers had made substantial purchases through the escrow. Said letter falsely represented that the National Container offer had been defeated by the rallying of the stockholders, but did not disclose that this had been accomplished largely by acquisition of stock through the escrow. Said letter misrepresented that the voting trustees would have the power to sell only on the same basis applicable to other depositing stockholders, whereas the trust agreement gave the trustees the right to join in a

syndicate for the purchase of the deposited stock and thereby remain stockholders or the beneficial owners of the stock so purchased. Said letter misrepresented the value of the company's assets and concealed the fact that the appraisal was only an insurance appraisal for insurance purposes and did not represent fair market value or cost less depreciation. Said letter did not disclose the current declines in the Company's sales, cash and net profits and the rise in its inventories.

(b) Said letter dated February 1, 1954 was fraudulent and contained and constituted misrepresentation that the voting trust agreement was then in full force and effect and that said agreement had been executed by the holders of more than a majority of the outstanding capital stock of the Company; whereas, in fact, said agreement had not been so executed and was not then in full force and effect.

7. The voting trust certificates issued and to be issued under said voting trust agreement were securities (§ 451.102(c) C.L. Mich. '48; § 19.742(c) MSA), the procurement of deposits of stock under said agreement and the issuance of voting trust certificates therefor constituted sales of such securities (§ 451.102(d) C.L. Mich. '48; § 19.742(d) MSA) and the voting trustees and their depositary and agent under said agreement were issuers of such securities (§ 451.102(e) C.L. Mich. '48; § 19.742(e) MSA) - all within the intendment, contemplation and scope of the so-called Michigan Blue Sky Law (§§ 451.101-133 C.L. Mich. '48; §§ 19.741-784 MSA). Said securities were not, and have not been,

accepted for filing, nor was, or has been, any license to deal in such securities issued under, and as required by, said law (§ § 451.103 and 451.107 C.L. Mich. '48; § § 19.743 and 19.747 MSA), and therefore, the procurement of such deposits of stock and the issuance of voting trust certificates therefor were contrary to and in violation of said law and unlawful.

8. Said voting trust agreement was entered into, and if carried out will be, in violation of and in conflict with the fiduciary duties of defendants Knapp, Raney, Blum, Leathers and Sempliner as directors of Monroe Paper Products Company and of said Knapp as its president, said Raney as its vice president and general manager, and of said Blum as its secretary-treasurer, because:

(a) The defendant officers and directors of Monroe Products Company owed to said Company and to all of its stockholders the fiduciary duties to act solely for the Company's benefit and for that of all of its stockholders, and not for the personal or particular benefit of themselves or of any of them or of any segment of said stockholders, or to the detriment of the other stockholders or of any portion thereof; whereas as voting trustees said defendants would be obligated to act for their personal and particular benefit and for the benefit of the depositing segment of the Monroe stockholders and to the detriment of the non-depositing Monroe stockholders and of plaintiffs.

(b) The fiduciary duties and conflicting obligations as voting trustees described in 8(a), ante, were applicable in respect

to any sale of, and any negotiations for the sale of, the controlling stock of Monroe Paper Products Company.

(c) The fiduciary duties and conflicting obligations as voting trustees described in 8(a), ante, were applicable in respect to any sale of, and any negotiations for the sale of, the controlling stock of Monroe Paper Products Company to plaintiff Waterbury.

(d) The defendant officers of Monroe Paper Products Company owed to said Company and to all of its stockholders the fiduciary duty to purchase Company stock on the open market, at market prices, on behalf of the Company and to transfer the same to the Company's treasury for periodic retirement; whereas as voting trustees said defendants would be obligated to prevent the sale of all of the deposited stock except en bloc and at a fixed price.

9. The purposes of the voting trust were to prevent the sale of Monroe Paper Products Company stock by its individual stockholders, give the defendant voting trustees control over the sale of the controlling stock in the Company and a right to purchase the same, to raise and fix the price of the stock owned by defendants and the depositing stockholders and to restrict the sale of said stock to en bloc and at a fixed price and to keep the defendant officers and directors in control of the Company unless and until the fixed price was paid.

10. The purposes of the voting trust were neither corporate purposes nor ones authorized by the Michigan voting trust law (§ 450.34 C. L. Mich. '48; § 21.34 MSA).

11. The purposes and provisions of the voting trust

restraining the sale of their stock by the depositing stockholders and prohibiting the sale of the deposited stock by the trustees unless made en bloc and at the fixed price:

(a) Are a contract, combination, trust and conspiracy in restraint of trade and commerce (15 USC § 1) and a monopoly, attempt to monopolize, and combine and conspiracy to monopolize a part of trade and commerce (15 USC § 2) in violation of the Sherman Anti Trust Laws (15 USC § § 1-7).

(b) Are an absolutely void (§ 445.708 C. L. Mich. '48; § 26.36 MSA) trust, contract and agreement not to sell an article and commodity of trade, use, merchandise and commerce below a common standard figure and fixed value and to keep the price at a fixed figure and to settle the price so as to directly and indirectly preclude free and unrestricted competition among the depositing stockholders and other purchasers in the sale of the deposited stock; are an absolutely void contract and agreement to pool, combine and directly and indirectly unite the interests of the depositing stockholders in connection with the sale of the deposited stock in order that its price might be affected and are unlawful, against public policy and void and the execution of such provisions was a criminal offense (§ 445.701 (5) C. L. Mich. '48; § 28.31 (5) MSA; § 750.558 C. L. Mich. '48; § 28.826 MSA).

(c) Violated the Michigan law against perpetuities and against restraints on alienation as to personal property recognized by Act 38 PA Mich. 1949 (§ 554.51 C. L. Mich. '48; § 26.49(1) -

(3) MSA).

12. No genuine issue as to any material fact involved exists, and plaintiffs are entitled to the judgment herein sought.

/s/ George E. Brand

/s/ George E. Brand, Jr.

Attorneys for Plaintiffs

June 11, 1957.

AFFIDAVIT OF BURTON S. KNAPP AND CHARLES E. RANEY

(Filed June 19, 1957)

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Burton S. Knapp and Charles E. Raney, being first duly sworn, each for himself says:

1. We are two of the defendants in this cause. We are two of the eight directors of the defendant Monroe Paper Products Company. We are respectively its president, and vice-president and general manager. We are two of the five defendant voting trustees. We make this affidavit in response to the plaintiffs' motion for summary judgment filed on or about June 11, 1957. The facts herein stated are on our personal knowledge.

2. In this cause there is no issue of fact as to the text of the voting trust agreement or that the voting trust certificates were not registered under the Federal Securities Act nor validated by the Michigan Corporation and Securities Commission. The other assertions of fact made in plaintiffs' latest motion are denied, and we expect that at the trial of this case the plaintiffs will have no evidence to sustain them, and that if necessary we shall disprove them. See defendants' answers to plaintiffs' 928 requests for admissions.

3. We are advised that plaintiffs' latest motion is substantially the same as the motion filed by the plaintiffs in this cause on or about September 20, 1954, and overruled by the court.

4. We re-affirm the affidavit of merit filed by us and the

other defendants on or about October 8, 1954.

5. We are advised that the substance of said motion was embodied in the plaintiffs' brief and oral argument on the last appeal to the United States Court of Appeals; that upon such brief and argument, said Court of Appeals declined to make any finding in favor of the plaintiffs and remanded the case to this court for re-trial.

AS TO ALLEGED VIOLATIONS OF FEDERAL SECURITIES ACT
(Plaintiffs' Motion, Paragraphs 1-2)

6. The invitation to join in the voting trust was never extended to the general public. It was addressed only to a limited group of people (approximately 300 named individuals) who were already stockholders of the defendant corporation. Most of them were residents of Monroe, Michigan or its vicinity. They were extensively informed regarding the Company's affairs. We were and are advised by counsel that under the circumstances here present the voting trust invitees were "a limited class of informed persons able to fend for themselves," (S.E.C. vs. Ralston Purina Company, 346 U.S. 119 at 122) so that the transaction was not a public offering.

7. The defendant voting trustees have not sent through the mail any offers to buy or sell voting trust certificates.

8. Plaintiffs never exchanged any stock for voting trust certificates, never offered any stock for such exchange, and were never solicited or invited to enter into the voting trust. They were not original holders of voting trust certificates, and at the time when this suit was commenced they were and they still are third-party strangers to the entire

transaction.

9. More than 80 per cent of all of the defendant company's stockholders owning approximately 52 per cent of all the company's outstanding stock have affiliated themselves with the voting trust; and defendant voting trustees presently hold such stock in trust for the benefit of all said voting trust members to insure the safe and prudent management of the defendant company by persons enjoying the confidence of said depositors and of the defendant voting trustees. The members of said voting trust are not parties to this action except for defendant Huber, a small voting trust certificate holder, and except as defendant voting trustees have deposited their own stock in the voting trust.

10. No action to set aside said voting trust transaction was brought by any voting trust member within one year after the issuance of his voting trust certificate; nor has any action allowed by the Federal Securities Act ever been brought by any person at any time. If there was an irregularity in the formation of the voting trust, the parties thereto have ratified it, as we are advised.

11. We are informed by the plaintiffs that while this suit was pending the plaintiffs themselves bought some of the voting trust certificates with full knowledge of the fact that said certificates had not been registered under the Federal Securities Act.

AS TO ALLEGED MISREPRESENTATIONS IN DEFENDANT HUBER'S LETTER OF DECEMBER 31, 1953 (Paragraph 3-6)

12. Defendant Huber's letter of December 31, 1953, was not sent to any of the plaintiffs.

13. To the best of our knowledge and belief every material statement in said letter was true and there was no known material fact omitted which was necessary to informed stockholder action. Numerous witnesses have already so testified and stand ready to so testify. (See our responses to plaintiffs' 928 requests for admissions.)

13a. The accompanying list of "stockholders who have already signed the voting trust agreement" was true and correct in that each person listed thereon had agreed in writing to sign such instrument as soon as it was printed, and did in fact sign it.

14. Said letter was accompanied by a copy of the proposed voting trust agreement, and the letter's summary of the agreement's contents was drafted by counsel and accurately states its legal effect, as we are advised.

15. All statements in said letter with reference to the company's assets were true and correct. The appraisal mentioned in said letter was not "only an insurance appraisal for insurance purposes" if thereby the plaintiffs intend to charge that it was not the carefully prepared work of a disinterested experienced appraiser obtained with the view (among other things) of informing the stockholders as to the value of their property. Said appraisal was the latest information available, represented replacement new value and depreciated value, and the letter so stated.

ALLEGED MISREPRESENTATIONS IN LETTER OF FEBRUARY 1, 1954 (Plaintiffs' Motion, Par. 6b)

16. The voting trust depositary's letter of February 1, 1954 was not sent to any of the plaintiffs.

17. To the best of our knowledge and belief, every statement in said letter was strictly true and correct. Witnesses have already so testified and stand ready to so testify again.

ALLEGED WANT OF VALIDATION BY MICHIGAN CORPORATION AND SECURITIES COMMISSION (Plaintiffs' Motion, Par. 7)

18. Plaintiffs never exchanged any stock for voting trust certificates, never offered any stock for such exchange, and were never solicited or invited to enter into the voting trust. They were not original holders of voting trust certificates, and at the time when this suit was commenced they were and they still are third-party strangers to the entire transaction.

19. No action to set aside said voting trust transaction was brought by any voting trust member within two years after his voting trust certificate was issued; nor has any action allowed by the Michigan Blue Sky Law ever been brought by any person at any time. If there was any irregularity in the formation of the voting trust, the parties thereto have ratified it, as we are advised.

20. We are informed by the plaintiffs that while this suit was pending the plaintiffs bought some of the voting trust certificates with full knowledge of the fact that they had not been validated by the Michigan Corporation and Securities Commission.

ALLEGED INCONSISTENT FIDUCIARY POSITION
(Plaintiffs' Motion, Par. 8)

21. The assertion in paragraph 8a of said motion

"As voting trustees, said defendants would be obligated

to act for their personal and particular benefit, and for the benefit of the depositing segment of the Monroe stockholders, and to the detriment of the non-depositing Monroe stockholders and of plaintiffs"

is not true and is the precise opposite of the duty imposed upon the voting trustees by the voting trust agreement (Paragraph 18 of Exhibit I to the Latest Amended Complaint):

"In voting stock under this agreement, the trustees will exercise their best judgment from time to time to select suitable directors to the end that the affairs of the company shall be properly managed; and, in voting on other matters which may come before them at any stockholders' meeting, will exercise like judgment."

22. At the time when said voting trust was organized (and ever since) the defendant company's officers had and have had no authority from the directors or the stockholders to buy in any of the company's own stock for retirement. The last preceding stockholders' meeting (September, 1953) had refused to authorize further reduction in the company's outstanding stock. Prior to such annual meeting there had been an authorization (and not a requirement) voted at the annual meeting of 1952 for the purchase of a limited number of shares (no price stated) for the purpose only of affording a market should it be necessary to accommodate stockholders who might be unable to sell and unable to find any purchaser. From and after the middle of 1953 there was an unprecedented outside market fostered by the plaintiffs and their associates.

23. The voting trust agreement does not impose upon the voting trustees any duty either to advocate or to oppose the company's acquisition of stock for retirement.

24. To the best of our knowledge and belief, the voting trustees have not done any act and do not contemplate any act inconsistent with their individual obligations as officers and directors of the defendant company. The defendants have not and do not expect to benefit personally from the formation or operation of the voting trust except as all other stockholders have and will continue to benefit by the defense of the company against its being captured by the plaintiffs.

ALLEGED UNLAWFUL PURPOSE OF THE VOTING TRUST

25. The purposes of the voting trust were not to prevent the sale of the defendant company's stock by its individual stockholders, or to give the defendant voting trustees control over the sale of the stock in the company, or to give the voting trust the right to purchase controlling stock in the company, or to raise and fix the price of stock owned by the defendants and the depositing stockholders, or to restrict the sale or fix the price of the stock, or to keep the defendants in control of the company.

26. The purpose of the voting trust was not to restrain trade, or to create a monopoly, or to prevent sales below common standard figures and fixed values, or to keep prices at fixed figures, or to preclude unrestricted competition, or to affect prices of commodities.

27. On the contrary, the purposes of the voting trust were to promote the stability of the company, the continuity of its management, the

continuity of its business policies, to protect the company from domination from untrustworthy interests, and to insure the safe and prudent management of the company in the interest of all of its stockholders.

Dated: June 19, 1957 /sgd/ Burton S. Knapp

(Sworn) /sgd/ Chas. E. Raney

AFFIDAVIT OF MERIT

(Filed October 8, 1954)

State of Michigan)
) SS
County of Monroe)

Burton S. Knapp, Charles E. Raney, George A. Blum, Don B. Leathers, and Arthur W. Sempliner, being first duly sworn, each for himself says:

Each of us is a director of Monroe Paper Products Company. The undersigned Knapp is president of said company, the undersigned Raney is vice president and general manager, and the undersigned Blum is secretary-treasurer. Each of us is a trustee under the voting trust agreement of December 31, 1953. We make this affidavit in opposition to the plaintiffs' motion for summary judgment. The facts stated herein are on personal knowledge. If we are called as witnesses herein, we will competently testify thereto.

To the best of our knowledge and belief, we have done no act as voting trustees which is inconsistent with our obligations as directors of said corporation. To the best of our knowledge and belief, no such act is contemplated.

To the best of our knowledge and belief, we have not dominated and controlled the affairs of said corporation except that we have been members of its board of directors and except as three of us have exercised the usual authority of the offices of president, general manager, and secretary-treasurer.

So far as we know, we have not personally benefited and do not expect to benefit from the formation of the voting trust except that we

believe that the formation of the voting trust has safeguarded the investment of all stockholders, including ourselves, in that it has assisted in so far keeping the plaintiffs from capturing control of the corporation and imposing undesirable policies upon it.

So far as we know, we have not made any use of our positions as directors or officers to promote the formation of the voting trust, nor have we made any use of the corporation's funds for such purpose.

The formation of the voting trust has not prevented the corporation from buying stock for its treasury, in that upwards of 80,000 shares remain in the hands of the stockholders who are not in the voting trust.

Dated: October 8, 1954

/s/ Burton S. Knapp

/s/ Chas. E. Raney

/s/ G. A. Blum

/s/ Don B. Leathers

/s/ Arthur W. Sempliner

(Sworn)

(Hearing on Summary Judgment)

* * *

Excerpts from transcript of proceedings on motion for partial summary judgment before Hon. Frank A. Picard, District Judge, at Bay City, Michigan, on Wednesday, June 26, 1957.

APPEARANCES:

GEORGE E. BRAND, SR., and
GEORGE E. BRAND, JR.,
3709 Cadillac Tower, Detroit 26, Michigan,

Appearing on behalf of the Plaintiffs.

FISCHER, SPRAGUE, FRANKLIN & FORD
By RICHARD FORD and
KENNETH B. McCONNELL,
1100 Dime Bldg., Detroit 26, Michigan,

Appearing on behalf of Defendants.

CHARLES H. KING,
130 E. Elizabeth, Detroit 1, Michigan,

Appearing on behalf of the Defendant Huber.

HUGH FRANCIS
1226 Dime Bldg., Detroit 26, Michigan,

Appearing on behalf of the Defendant
Monroe Paper Products Company.

\- - -

* * *

[6] THE COURT: . . . . To that brief, you gentlemen have filed an affidavit under the rules, haven't you?

MR. FORD: We filed the affidavit before we saw the brief.

THE COURT: What is that?

[7] MR. FORD: We had filed the affidavit before Mr. Brand filed the brief.

THE COURT: Oh, yes, before he filed the brief, yes, because he mentions the affidavit in his brief, doesn't he?

But, anyway, you filed an affidavit under the rules to prevent the court taking it for granted that everything that was said in there was true, and showing the court that there was some question of fact here.

Mr. Brand says that that does not comply with the rule. Am I right, Mr. Brand?

MR. BRAND, SR.: Yes.

THE COURT: As I went over it, twice, but not having the rule before me, either time, because this is up in bed at night, my impression was that, technically, Mr. Brand is right. However, in a matter of this kind under no circumstances would I permit a case to go off on a question of fact just because somebody didn't comply with the rule, I can tell you that, whether it had been Mr. Brand that made the affidavit, or you.

I would say to you gentlemen, under any circumstances, you better make another affidavit, and you would, and this one would comply with the rule. I know that. Nobody gets off on a technicality in this court. I mean, nobody gains or loses on a technicality if I can help it.

[8] So this morning, insofar as facts affect this lawsuit, I am taking the position that you did comply with the rules. If you want to file another affidavit later on, or if you think this is sufficient, it is all right.

* * *

[161] THE COURT: . . . . Now, let's get down to "voidable". The [162] public offering. You say it was not a public offering and you cite certain cases and they cite a lot of cases. And why isn't this a public offering?

You did mail these outside of the state, didn't you?

MR. FORD: Oh, yes, they were mailed outside of the state and they were mailed through the Post Office.

THE COURT: And those people did not have all the information that the Board of Directors had, did they?

MR. FORD: That is disputed. That is disputed.

THE COURT: How do you mean? Had they been given -- is there any evidence that they had all been given all this testimony or all of this information about what had been done in the way of buying stock and violating the resolution that had been passed, that if you bought the stock it was to go into -- if the company bought any stock it was to go into the -- that the directors did go out and buy stock, and they didn't put that in the treasury but on the contrary they went out and bought the stock for themselves?

MR. FORD: Now, that is a very controversial question right there, and that is bitterly disputed on the facts.

THE COURT: Is what?

[163] MR. FORD: I say it is bitterly disputed on the facts. And please regard that as an open question.

* * *

[172] MR. FORD: Now, to conclude what we were going to say about a public offering, the cases, it seems to us, are not very helpful. We are left in the position where all we can say is we cannot tell whether this was a public offering or not, and we don't see how any court can except the United States Supreme Court itself, for the reason that -- I put it that way -- is because of this language from this Ralston-Purina case, and from various

other cases of which Campbell against Degener in 97 Federal Supplement is another,

[173] "The principal factors which determine a public offering have been construed to include (a) the number of offerees and their relationship to each other and to the issuer; (b) the number of units offered; (c) the size of the offering; (d) the manner of the offering."

Well, all that is to be considered. But when we have considered it we don't really know, as far as the cases go, just what to do with it.

The other case says:

"The applicability of Section 4 (1), the non-public offering exemption, should turn on whether the particular class of people affected need the protection of the Act. An offering to those who are shown to be able to fend for themselves is a transaction not involving a public offering. The focus of the inquiry should be on the need of the offerees for the protection afforded by the registration."

Now, it is our belief that it will be demonstrated by the testimony of all the people that purchased here, if the court should think finally that that is an essential thing in order to make a decision here, that this belongs in the non-public offering group, but whether that is so or not it [174] would seem to us, and we submit to your Honor, that the law is quite a bit more clear when we get to the question of if it was a public offering and if it should be registered, has Mr. Kinsey got any cause of action?

THE COURT: You mean in this court.

MR. FORD: In this court, in this case.

* * *

- - -

OPINION OF THE COURT

(Filed July 30, 1957)

Plaintiffs move this court, pursuant to Rule 54(b) FRCP, to invalidate a voting trust agreement while reserving judgment on damages and other related issues of fact raised by their complaint.

FINDINGS OF FACT

All plaintiffs are stockholders of Monroe Paper Products Company, and plaintiff Kinsey is, in addition, a director. Defendants Knapp, Blum, Raney, Leathers and Sempliner are directors and also trustees under the above voting trust agreement. Defendant Huber, neither a trustee nor director, was chairman of the stockholders' committee which allegedly participated in creating the trust agreement.

The controversial trust, which empowered defendant trustees to vote 95,244 shares of Monroe's stock was created at a time when plaintiffs and defendants were waging a fight to gain financial and managerial control of the corporation. The fight followed the death of Alex J. Groesbeck, its president, on May 10, 1953, owning 32,814-1/2 of the 190,000 shares of Monroe stock and who had been for years the dominant figure in the company's operation, control and management. Ex-Governor Groesbeck died in 1953 and in September, 1953 National Container Corporation made a public offer to purchase all, but not less than 55.6% of Monroe's outstanding stock thus precipitating the battle for control, which first stage began in September, 1953 with the establishment of an escrow agreement by defendants and was augmented in December, 1953, when the voting trust agreement was consummated.

Defendants' escrow agreement, which was put into effect

immediately after National Container's purchase offer, but shortly before the 1953 stockholders' meeting, was designated to defeat acceptance of that offer. That escrow agreement provided that any person wishing to purchase company stock for $10.00 per share could deposit money in a fund to be held by the Monroe State Bank for that purpose. Plaintiffs allege that defendants, by soliciting company customers, suppliers, employees, and by contributions of $15,000.00 by Raney, $15,000.00 by Leathers and $5,000.00 by Blum were able to secure deposit of $162,000.00 in escrow with which was purchased 15,538 shares of company stock both through means criticized by plaintiffs as fraudulent and with these secured proxies as well as other stock controlled by them along with their individual holdings, enabled them to defeat the National Container offer and secure their own re-election as directors.

But the threat that plaintiffs might still be able to purchase controlling interest in Monroe shortly, remained, so to neutralize this possibility the voting trust agreement was executed on December 31, 1953 as a permanent proxy to defendants for a period of five years. Plaintiffs claim that the voting trust, thus created again by alleged devious means, is void or at least voidable as a matter of law and they have enumerated the following five reasons why that voting trust is void and one reason why it is voidable.

VOID - because it

(1) Violates the Michigan Restraints of Trade Law M.S.A. 28.31 (5) and 28.36;

(2) Violates the Sherman Antitrust Act 15 U.S.C. 1;

(3) Violates Michigan Common Law against restraints on the alienation of property;

(4) Places each director in an inconsistent position as director and trustee in violation of his fiduciary duties as the former; and

(5) Defendants, in creating the trust violated 15 U.S. C. 78 cc and Rule X 10B-5 of the Securities Exchange Commission.

VOIDABLE - because

(1) Neither the agreement, nor certificates issued pursuant thereto, were registered as required by the Securities Act of 1933, 15 U.S.C. 77a et seq., and Michigan Blue Sky Law M.S.A. 19.747.

CONCLUSIONS OF LAW

We briefly discuss and decide these contentions seriatim.

1. Is trust agreement void because in violation of Michigan's laws against Restraint of Trade?

Sub-paragraph (5) of M.S.A. 28.31 provides inter alia, that it shall be unlawful for two or more persons to agree not to sell any article or commodity below a common fixed price, or in any manner establish or settle the price of any article so as to directly or indirectly preclude free and unrestricted competition for the purchase thereof. M.S.A. 28.36 declares that any contract violation of sub-paragraph (5) is against public policy and absolutely void.

True under the trust agreement the stockholders agreed that the stock deposited thereunder could not be sold for (a) less than $15.00 per share and (b) only if the purchaser would purchase all of the stock so deposited. But we do not agree with plaintiffs' claim that all price fixing is illegal under Michigan law, on the contrary only contracts embodying

unreasonable price fixing provisions. S-K Oil Co. v. Mac's Auto Mart, Inc., 329 Mich. 351. In Hubbard v. Miller, 27 Mich. 14 at p. 19, Chief Justice Christiancy narrowed the prohibition to the reasonableness of any contract encompassing price fixing. He said:

> "***if, considered with reference to the situation, business and objects of the parties, and in the light of all the surrounding circumstances with reference to which the contract was made, the restraint contracted for appears to have been for a just and honest purpose, for the protection of the legitimate interests of the party in whose favor it is imposed, reasonable as between them and not specially injurious to the public, the restraint will be held to be valid."

We hold that at this point this trust agreement is not unreasonable from any angle, "business situation", "objects of the parties" designed "for the protection of the legitimate interests of the parties" or "not specially injurious to the public" as a matter of law.

2. Does the trust agreement violate the Sherman trust law?

Here again plaintiffs base invalidity upon alleged price fixing and restraint of trade features of the agreement. Section 1 of the Sherman Antitrust Act condemns as illegal

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations."

While the Sherman Act, like the Michigan Restraint of Trade Act, does not encompass and condemn all activity that may restrain trade (Apex Hosiery Co. v. Leader, 310 U.S. 469) unlike the Michigan Act, price fixing under the Sherman Act is illegal per se (U.S. v. McKesson and Robbins, 351 U.S. 305) if it affects commerce among the States, and is not exempt by

the law, the good intentions of the parties to the agreement, and the reasonableness thereof to the contrary notwithstanding.

Here we are not concerned with reasonableness, dependent upon circumstances and facts surrounding the execution of the trust agreement, but only with whether the agreement fixes prices so that it restrains commerce among the states.

And again we find that plaintiffs' contention that the trust agreement in question fixed prices is not well founded. As stated in U.S. v. Bausch & Lomb Co., 321 U.S. 707 p. 722, quoting U.S. v. Colgate & Co., 250 U.S. 300,

> "... the Sherman Act 'does not restrict the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell.'"

It may be appreciated, therefore, that limitation upon exercise of this right is that the seller may not, under the Sherman Act, go beyond exercise of the right, and unduly hinder, by contract or other means, the free natural flow of interstate commerce. In the case at bar the stockholders under the trust agreement simply authorized the trustees not to sell to any person who would not buy all of their stock at $15.00 per share. They went no further. Such authority of trustees to sell only upon certain conditions, or indeed, to refuse to sell at all, is a feature indispensable to the existence of such agreements. Voting trusts are authorized in nearly all, if not all, of the forty-eight states. We do not divine the congressional intent, at the time the Sherman Act was enacted, to have

been to outlaw such agreements by implication and we will not make that result possible by abuse of the power of judicial construction.

Aside from the foregoing, we entertain grave doubts as to whether the trustees and the stockholders under the trust agreement limited activity that may be characterized as "commerce among the several states." The trust was consummated in Michigan, and it is clear that, for the most part, economic repercussions therefrom will not reach beyond the borders of this state. See Lawson v. Woodmere, 217 F. 2d 151; Spears Free Clinic and Hospital v. Cleere, 197 F. 2d 125.

We deny the motion insofar as it is based upon the instant contention.

(3) Does the trust agreement violate the common law of Michigan against restraints on the alienation of property?

Plaintiffs cite several Michigan cases to sustain this contention. In other words, if an instrument limits the persons to whom property can be sold, either by specific designation, or by setting a price exceedingly high or exceedingly low, such instrument has the effect of removing the property from the market and is void as a restraint on the right of alienation. This court is of the opinion that the Michigan cases do not support plaintiffs' position. Indeed, the most recent case on the subject, Lantis v. Cook, 342 Mich. 347, cited by plaintiffs to sustain their contentions, holds to the contrary. In that case Michigan's Supreme Court held valid a deed which provided that if the grantees decided to sell the property conveyed in lieu of using it as a homestead, they must first offer it to the grantor for $4,000.00. In that case the deed fixed a price and in addition

thereto, determined who could purchase. Yet the court held it was not an illegal restraint on alienation. In the case at bar the stockholders by use of a voting trust merely did what they had a right to do, i. e. divorced their legal and equitable interest in the stock by conveying the former to the trustees while retaining the latter for themselves. This case is, we believe, dead against plaintiffs in the majority opinion. See also Eccleston v. Indiatlantic, Inc., 319 Mich. 248. Any restraint or alienation resulting therefrom was merely incidental -- was not the main purpose of the agreement, and did not adversely affect its validity. Lantis v. Cook, supra.

4. Did the voting trust agreement place defendant directors in an inconsistent position in violation of their fiduciary duties?

Plaintiffs' assertion that the trust agreement placed defendants in a position antagonistic to their fiduciary duties as directors is based upon the following:

(a) A 1952 stockholders' resolution required defendants as directors to purchase stock on behalf of the corporation while their duties as trustees required them to make such purchase impossible, since under the trust no stock could be purchased by the corporation or any other person unless 95,000 shares were purchased; and

(b) Under the trust agreement and the escrow agreement which preceded it, defendants were permitted to, and did purchase stock for their own benefit while the 1952 stockholders' resolution required them as directors to make such purchases on behalf of the corporation.

While plaintiffs claim that a 1952 stockholders' resolution requires defendant trustee directors to purchase stock for the corporation, this is denied by the latter. They contend that the stock purchase

resolution was no longer in effect when they purchased stock for themselves, nor was it in effect at the time the trust agreement was executed, and their assumption of their duties of trustees. These issues should be decided only after proofs have been taken and not on motion for summary judgment.

Seagrave Corp. v. Mount, 212 F. 2d 389 and Ashman v. Miller, 101 F. 2d 85 cited by plaintiffs, were decided only after it had been proven that the loyalty of a director actually was divided between self interest and duty to the corporation and its stockholders and so a conflict existed. Here again this calls for proof.

5. Did defendants, in creating the trust agreement violate Section 78 cc of the Securities Act of 1933 and Commission Rule X-10 B-5, both of which declare that use of any "Artifice or device to defraud" or the "making of any untrue Statement" renders such contract void?

This reason is based on the letter allegedly sent by defendants to certain stockholders, in order to induce them to subject their stock to the trust and which allegedly contained a false and untrue statement. The charge is immaterial since the facts are denied by defendants and until such time as the court is able to hear testimony we withhold judgment thereon denying plaintiffs' motion for summary judgment on this ground.

We come now to plaintiffs' claim that the trust agreement is

VOIDABLE

1. Because of failure to register the same under the Securities Act of 1933 and/or the Michigan Blue Sky Law.

The Securities Act of 1933 does prohibit use of interstate

commerce mediums of communications (mail, transportation, etc.) to facilitate the sale of any security not registered with the Securities Exchange Commission and provides Civil and Criminal penalties for the violation thereof. See Section 77 L and 77. But its applicability is premised upon certain conditions -

1. A public offer by an insurer to sell or buy;

2. The security so offered must not be registered, nor exempt, and must be of a type covered by the Act; and

3. There must have been use of the instrumentalities of interstate commerce to buy, sell, exchange or offer to do any of the foregoing.

Here we hold that the voting trust, the certificates and defendants' actions fall within the prohibitions of the Act for the following reasons:

1. "Security" includes voting trust certificates. Sec. 77B (1);

2. "Sale", "sell", "offer to sell" includes any attempt or offer to dispose of the securities. Sec. 77B (3). Sale also includes exchanges of securities. See U.S. v. Riedel, 126 F. 2d 81;

3. "Issuer" of the security includes and means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provision of the trust or other agreement; and

4. An offer is public even though the offer is confined to stockholders of offering company. See Merger Mines Corp. v. Grismer, 137 F. 2d 335; Securities and Exchange Commission v. Sunbeam Gold Mines Co., et al, 95 F. 2d 699.

Defendants admittedly failed to register the Voting Trust or the certificates with either the proper state or federal administrative agency and a letter soliciting stockholders to subject their stock to the

Voting Trust was sent through the channels of interstate commerce. In view of the cases and sections above cited, there can be no doubt that defendants violated the Security Act. This is true because clearly defendants as issuers of the voting trust certificates made a public offering of a security covered by the Security Act. See Corporation Trust Co. v. Logan, 52 F. Supp. 999.

The trust agreement is voidable but the next question that presents itself for decision is what remedy, if any, is available to plaintiffs.

We believe Corporation Trust Co. v. Logan, supra, answers this problem. There a group of stockholders subjected their stock to a Voting Trust Agreement. The trustees issued voting certificates, but failed to file a registration statement. Subsequently, the stockholders tendered their voting certificates and asked for return of their stock certificates on grounds that the voting trust was illegal and void because there had been no compliance with the Securities Act of 1933. The court held in a well reasoned opinion that the stockholders were entitled to return of their stock. The ruling was made in face of the voting trustees' contention that if the stockholders were entitled to any relief at all it was by way of damages or in the alternative by injunction until provisions of the Act relating to registration were complied with. The court rejected this argument citing Deckert v. Independence Corp., 311 U.S. 282 and Section 77L (1) of the Act. Quoting from the Deckert case, supra, the court said at p. 1004:

> "Moreover, in Section 22(a), 15 USCA Section 77v (a), specified courts are given jurisdiction 'of all suits in equity and actions at law brought to enforce

> any liability or duty created by this sub-chapter.' The power to enforce implies the power to make effective the right of recovery afforded by the Act. And the power to make the right of recovery effective implies the power to utilize any of the procedures or actions normally available to the litigant according to the exigencies of the particular case...."

Then the court added:

> "It is clear that the case at bar comes within the first classification of Section 12 which relates to unlawful sales of securities for which no registration statement has been filed. Under that section, the remedy afforded is the right to sue, either in law or in equity, 'to recover the consideration paid for such security....' As the Voting Trust Certificate is, under the statute, the security, the consideration paid in exchange therefor can only be the Mokan stock, (certificates surrendered by the stockholders) and it is this stock which defendants (plaintiffs in the case before us) seek to have restored to them upon the tender of the trust certificates. I conclude the statute authorizes the relief prayed for here." (Parentheses ours)

And finally at page 1005:

> "....if the agreement was tainted originally with illegality then any party who desires should, I believe, be free from the bondage of such an instrument."

True, in the Logan case the stockholders who sought release of their stock from the voting trust were original parties to the agreement, while in the case at bar, plaintiff Waterbury is an assignee who had knowledge of the agreement's imperfection prior to its acquisition of the voting trust certificates, which fact tends to lend truth to defendants' contention that the voting certificates were purchased for the express purpose of bringing suit. But this is of no consequence. As held in Traer v. Clews, 115 U.S. 528, p. 539, there is a distinction between the conveyance of a mere right to file a bill in equity and the conveyance of the property to

which the former is attached. The former is "contrary to public policy and savoring of maintenance," but when the property itself is conveyed

> "the fact that the grantee may be compelled to bring a suit to enforce his right to the property, does not render the conveyance void.",

or defeat the right to maintain suit.

In view of our holding that plaintiff Waterbury is entitled to renounce the voting trust because in violation of the Securities Act of 1933, we deem it unnecessary to unduly lengthen this memorandum with a detailed discussion of the parties' rights under Michigan's Blue Sky Law. Suffice to say that M. S. A. 19. 747 prohibits sale of securities unless the same have been registered. Section 19. 760 provides that in cases where securities are sold in violation of the Blue Sky Law, the transaction is voidable at the election of the purchaser. Under the Michigan Law, as under the federal, the fact that the person seeking to void the transaction is an assignee makes no difference. Rights under the Blue Sky Law are assignable. See Superior Piston Ring Co. v. Brown, Anthony & Co., Inc., 294 Mich. 358.

This is a court of equity. For failing to comply with the law should defendants be rewarded for their wrong doing or condemned with nothing but a verbal chastising? We don't believe so.

We hold -

1. That the "trust agreement" was voidable and that plaintiffs are in a position to challenge it. Therefore with the date for the annual election coming in September we believe that this corporation and its stockholders should be put in status quo

ante - as far as possible. As a result of a resolution passed before dissention was apparent, the corporation did purchase certain stock from stockholders marked for retirement. Whatever that stock amounted to - we hold it should be placed in the treasury and not voted at the annual election;

2. Trust certificates purchased by Waterbury may be exchanged at the office of the corporation or with the depository, wherever they may be, for stock certificates in his name;

3. The original owners of all the stock sold since the trust agreement was entered into are hereby entitled to a return of the same upon payment of the consideration received by them when they sold their stock certificates and this must be done not later than September 1;

4. All holders of stock certificates who so desire may exchange their trust certificates for their own stock certificates on or before September 1, by written request and if they fail to do so by that time then their failure will be taken as a granting of proxy authority by the trustees to vote the stock; and

5. A copy of the last four pages of this opinion to be sent to all stockholders of record as of December 1, 1953, on or before August 9, 1957.

In other words, we believe that a free election as near as we can have it, for the directors and controlling officers of this corporation should be held at the annual meeting, notice of which shall be given according to the by-laws by the proper officers so that perhaps this

corporation may find an end to its troubles.

The above constitutes a partial judgment in this case at the present time chiefly as provided in Rule 54(b). We intend it to be appealable and determine there is no just cause for delay in having these issues finally settled.

We do not in this opinion decide anything on the facts. We do not hold that it is not possible that the proof might alter our decision as to whether or not this trust agreement is void or voidable on the facts. We do not pass upon any of the alleged wrongful acts of these directors.

Finally, we believe that the following questions of fact should be taken up later in the order selected by plaintiffs since plaintiffs have brought action:

(a) The alleged activities of these defendant directors and suppliers who purchased stock and the alleged "reward" to these suppliers in surplus inventory to the damage of the corporation;

(b) The alleged fraud of the Huber letter and his other alleged participation;

(c) The alleged fraud of the insurance appraisal;

(d) The alleged fraud of the representation of the amount of trust certificates then sold as sent to some of the stockholders in a certain list; and

(e) The alleged fraud of pensions granted to officers of the corporation through the efforts of these defendants or some of them.

There is nothing in this decision that prevents any stockholder or anyone else from now purchasing the stock of the Monroe Paper

Products Company wherever he may find it or for whatever price. This partial judgment is aimed to free the stock of this corporation as much as we can in view of the circumstances under which we find the corporation at the present time and to temporarily, at least, dispose of the alleged double and triple damage claims of plaintiffs based on the trust agreement by being void as a matter of law.

(Stamped) FRANK A. PICARD
United States District Judge

Dated: 7-30-57

PARTIAL FINAL JUDGMENT

At a session of said Court held at
Detroit, Michigan, August 1, 1957

PRESENT: HON. FRANK A. PICARD, DISTRICT JUDGE

Plaintiffs have moved for partial final judgment as to the validity of the voting trust. Said motion has been heard and considered and the Court has made and filed its Findings of Fact, Conclusions of Law and decision and has determined that there is no just reason for delay and that partial final judgment should be entered and an annual meeting of stockholders of the defendant company promptly held. Therefore, for the reasons and grounds stated in the Court's Findings of Fact and Conclusions of Law and decision; IT IS ORDERED THAT:

1. An annual meeting of the stockholders of Monroe Paper Products Company be held during the month of September, 1957 in accordance with the by-laws of said Company and that not less than fourteen days notice of said meeting be given by said Company to each of its stockholders of record.

2. The 3329 shares of Monroe Paper Products Company stock heretofore purchased for said Company by its officers pursuant to a resolution of its stockholders be placed in the treasury of said Company and not be voted at its annual meeting.

3. The Voting Trust Agreement dated as of December 31, 1953 under which defendants Knapp, Raney, Blum, Leuthers and Semplinger are named the Voting Trustees, a copy of the same being Exhibit 1 to the Complaint - As Amended and Supplemented, and the deposits of Monroe Paper Products Company stock made under said agreement in exchange

for Voting Trust Certificates and otherwise, and each of said agreement and deposits, are, and are declared to be, not void but to be voidable by the depositing stockholders and by plaintiff Waterbury Corrugated Container Co.

4. Prior to September 1, 1957, upon written request of any depositing stockholder, or his assignee or vendee including plaintiff Waterbury Corrugated Container Co., and upon surrender by said stockholder, assignee or vendee of all voting trust certificates issued in respect to the deposited stock involved, the defendant Voting Trustees and their depositary and other agents shall surrender and deliver to said depositing stockholder, assignee or vendee, as the case may be, all shares of Monroe Paper Products Company stock deposited, assigned or purchased. Upon surrender to the defendant Company of any of said shares of stock so returned to any said assignee or vendee said Company shall issue stock certificates therefor to said assignee or vendee and if said a surrender is made prior to the annual meeting said stock may be voted by said assignee or vendee at the annual meeting. Any depositing stockholder or assignee or vendee who does not surrender his trust certificates and request return of the deposited stock prior to September 1, 1957 shall be deemed to have given proxy authority to vote such stock to the defendant voting trustees.

5. All Monroe Paper Products Company stock purchased during the period from December 1, 1953 to the date of this Judgment, either directly or through the purchase of voting trust certificates, by any party to this litigation or by his agent or through any arrangement made, to the knowledge of the purchaser, by any party to this litigation or his

agent, shall be reassigned and returned by the purchaser to the seller upon refund by the seller to the purchaser of all consideration received by the purchaser for such stock if, prior to September 1, 1957, the seller makes written request for such reassignment and return upon the purchasers and tenders said consideration to said purchaser. Upon surrender to the defendant Company of any said shares of stock so reassigned and returned to the seller at the annual meeting. Any seller who does not so request reassignment and return and make tender prior to September 1, 1957 shall be deemed to have affirmed the sale made.

6. Nothing in this Judgment shall prevent any person from now or hereafter purchasing stock of Monroe Paper Products Company wherever he may find it and for whatever price.

7. Jurisdiction is reserved of all matters not adjudicated herein.

8. A copy of this order shall be sent by the defendant Company to all of its stockholders of record, both presently and as of December 1, 1953.

/sgd/ FRANK A. PICARD

DISTRICT JUDGE

AFFIDAVIT OF RICHARD FORD

(Filed Aug. 1, 1957)

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

Richard Ford being first duly sworn, deposes and says:

1. I am one of the attorneys in this cause for the defendant voting trustees.

2. I have this day had the following telephone conversation with Samuel L. Moss, C.P.A., of 19310 James Couzens Highway, Detroit, Michigan.

3. Mr. Moss stated:

a. That he was the independent Certified Public Accountant who has audited the books of the defendant, Monroe Paper Products Company and has prepared the company's annual statements for many years.

b. That he has completed the auditing work for the company's annual statement for the year ended June 30, 1957 and is now having his report typed and that he expects it to be completed and released within ten days.

c. That he finds and his report will show that for the year ended June 30, 1957 the company had a net loss before income tax of approximately $22,106.49 (as compared with $79,382.19 for the previous year) and a net loss after taxes of approximately $13,369.13 (as compared with $40,694.03 for the previous year).

d. That such loss is much less than the amount

added to the company's reserve for depreciation so that there has been a substantial increase in the company's working capital and the company's cash position remains good.

4. Mr. Moss expressed willingness to make an affidavit to the foregoing effect but I have not had sufficient time to prepare it and obtain his signature.

(Sworn) /s/ Richard Ford

NOTICE OF APPEAL

(Filed Aug. 2, 1957)

Notice is hereby given that Burton S. Knapp, Charles E. Raney, George A. Blum, Don B. Leathers, and Arthur W. Sempliner as trustees under a certain voting trust agreement dated December 31, 1953 and pertaining to stock of Monroe Paper Products Company, and as individuals, directors, officers and stockholders thereof, being some of the defendants herein, do now hereby appeal to the United States Court of Appeals for the Sixth Circuit from the partial summary judgment heretofore entered in this action pursuant to Rule 54 (b) and bearing dates of July 30 and August 1, 1957.

Dated: August 2, 1957

FISCHER, SPRAGUE, FRANKLIN & FORD

/s/ Richard Ford

/s/ Kenneth B. McConnell

Attorneys for Knapp et al as Voting Trustees, Defendants and Appellants
1100 Dime Building, Detroit 26, Mich.

/s/ Arthur W. Sempliner

Attorney for Knapp et al as Individuals etc., Defendants and Appellants
2005 Dime Building, Detroit 26, Mich.

ORDER GRANTING STAY OF PROCEEDINGS PENDING APPEAL AND FIXING AMOUNT OF SUPERSEDEAS BOND

At a session of said court held in the Federal Building in the City of Detroit on the 6th day of August, 1957.

Present: Honorable Charles C. Simons, Chief Judge

Appellants having moved this Court for a stay of proceedings pending determination of their appeal, and the Court having heard oral argument of counsel and after due consideration,

IT IS HEREBY ORDERED that carrying out and proceedings for enforcement of the judgment entered in the Court below on August 1, 1957 are hereby stayed pending hearing and determination of this appeal and the coming down of the mandate of the Court, provided that there is filed in the office of the Clerk of said District Court within 10 days from today a surety company supersedeas bond in the penal sum of One Hundred Thousand ($100,000.00) Dollars, said bond to be in form and with surety approved by said Clerk and to be in favor of the defendants Monroe Paper Products Company, its stockholders and voting trust certificate holders, and these plaintiffs as their interests may appear.

This order is without prejudice to the right of appellees to move the full Court or three judges thereof at any time to vacate this stay

/s/ Charles C. Simons
Chief Judge

Approved as to form:

GEORGE E. BRAND, Jr.
Attorney for Appellees

SUPERSEDEAS BOND

(Filed Aug. 9, 1957)

KNOW ALL MEN BY THESE PRESENTS that we Burton S. Knapp, Charles E. Raney, George A. Blum, Don B. Leathers, and Arthur W. Sempliner as principals, and Seaboard Surety Company, a New York corporation, as Surety are held and firmly bound unto Monroe Paper Products Company, a Michigan corporation of Monroe, Michigan, its stockholders and voting trust certificate holders, John P. Kinsey, Lawrence G. Kunkel and The Waterbury Corrugated Container Co., a Connecticut corporation, as their interests may appear, in the full sum of One Hundred Thousand ($100,000.00) Dollars, to be paid to the above-named obligees, their heirs, executors, administrators, successors and assigns;

To which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 8th day of August, 1957.

WHEREAS, on August 1, 1957 in the United States District Court for the Eastern District of Michigan, Southern Division, Judgment was rendered in the above action in favor of the above-named obligees and against the above-bounden principals, and on August 2, 1957 said principals duly appealed to the United States Court of Appeals for the Sixth Circuit where said matter is now pending; and

WHEREAS, lately said Court of Appeals made an Order staying further proceedings until the determination of said appeal, conditioned upon the filing of this bond;

(Supersedeas Bond)

NOW THE CONDITION OF THIS BOND is such that if the said above bounden principals shall prosecute their appeal to effect and shall satisfy the said judgment in full together with costs, interest, and damages for any delay if said appeal is dismissed or if the judgment is affirmed, and shall satisfy in full such modification of the judgment, costs, interest and damages as may be adjudged and awarded by said Court of Appeals, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said principals have hereunto set their hands and seals, and the said surety has caused this bond to be signed in its name by its duly authorized attorney-in-fact and sealed with its corporate seal, all as of the date above written.

/s/ Don B. Leathers (LS)

/s/ Arthur W. Sempliner (LS)

/s/ Burton S. Knapp (LS)

/s/ Charles E. Raney (LS)

/s/ George A. Blum (LS)

/s/ Seaboard Surety Company

By /s/ James M. Wilson
Its attorney-in-fact

(Corporate Seal)

(Power of attorney omitted)

Approved as to form

/s/ George E. Brand, Jr.
Attorney for Appellees

(The following material consists of excerpts from certain depositions and trial transcripts of proceedings had on the first trial of this cause:)

BURTON S. KNAPP'S sworn testimony on First Trial, dated November 5, 1954

* * *

DIRECT EXAMINATION BY MR. FORD:

* * *

[1063] Q All right. Now at about this same period, and I am speaking, say, from 1945 on up to 1952, was the stock of this company listed on any stock exchange?

A It was not. Never has been.

Q Was it extensively traded in and around Monroe?

A No, it wasn't. There was very little demand for this stock.

Q Was there any method commonly used by which anyone could sell the stock, if you had someone who wanted to sell?

A It was generally known if and when a person indicated he or she would like to sell their stock, they would contact Mr. Raney, and Mr. Raney would contact Governor Groesbeck, and I assume in all of the cases a provision was made by which the stock was purchased.

Q And throughout that period, Mr. Groesbeck increased his own stock holdings?

A He did. As I recall it, the Governor in a suit in which he defended the company and won it, I think, as I recall, was issued 5,000 shares of stock at the time. When he died he had increased those holdings

to 32,800-some odd shares.

Q The Governor's stock holdings then, in the first place, were received as an attorney's fee?

A It was, and the company gave the Governor and his associates a small amount of money and a block of stock.

Q The Governor subsequently increased the size of that block by purchase?

[1064] A He did.

Q And whether or not other people either than connected with the company or who were brought into the company likewise acquired stock?

A They did.

Q Did you acquire any?

A I did not.

Q In that same way, did some of this stock that was being brought in in the method you describe -- was some of it purchased by the company?

A Yes, it was.

Q Now I would like to refer to the annual meeting in the month of September, 1952, and some minutes have been put in evidence here already with reference to the purchase of some stock by the company. Do you recall that, Mr. Knapp?

A I recall it, yes.

Q Well, now, just a minute until I find it. Actually it appears that there was a resolution adopted September 25, 1952, reading this way:

"Resolved, that the officers of this company are herewith authorized to purchase on behalf of the company not

to exceed an additional 10,000 shares of its stock at the market price, if and when any of its stockholders are desirous of selling and voluntarily offer the same for sale, thus affording if they desire a market for them at current [1065] prices."

Were you present, Mr. Knapp?

A I was and voted for the resolution.

Q You were present when the resolution was adopted?

A That's right.

Q Was there any discussion in connection with it or do you have any recollection that will assist you in deciding what the purpose of the resolution was?

A I don't recall there was any extensive discussion about it. In fact, there was very little discussion. I think the proposition, the proposal was adopted and then presented to the stockholders and put into effect.

MR. BRAND: Mr. Ford, I will interrupt you very little. Would you mind reading the previous resolution about the retirement of the 10,000 that had just been purchased?

MR. FORD: All right.

Q (By Mr. Ford) Well, will you state, Mr. Knapp, whether you recall at that same meeting the adoption of the resolution reading like this:

"Resolved, that the action of the officers of the company in purchasing 10,000 shares of the capital stock for retirement purposes is approved, said stock retirement

without authority of the officers or directors of the company to repurchase continues the same as set by the corporation, thereby reducing the authorized capital stock from $300,000 [1066] to $190,000 represented by 190,000 shares of $1 par value."

Do you remember that at that same meeting?

A I faintly recall it, yes.

Q Now let's pause just a minute to see what the situation was. Is it fair to conclude from these minutes that the officers of the company had on their own responsibility purchased some stock for the corporation?

A Yes, sir.

Q And at this meeting the stockholders ratified it; is that correct?

A Yes, sir.

Q The stockholders then adopted this additional resolution.

Now calling your attention to the last language in this resolution about the purchase of the additional stock, "thus affording, if they desire, a market for them at current prices," is that a true statement, Mr. Knapp, of the purpose of the resolution?

A That is a fact because there wasn't practically a market in existence. In other words, unless the Governor made it.

* * *

[1183] Q Now, Mr. Knapp, in this trust agreement as you finally signed it, there appears a provision about the possible sale of this stock by the trustees for not less than $15 a share. Do you recall that paragraph or feature?

A I knew very definitely of it.

Q Now what is the history of that particular thing in the agreement?

Had that been much discussed at these meetings?

A It had been quite extensively discussed and there were many opinions. One opinion advanced was that if and when we didn't establish [1184] a price of $15, perhaps the stockholders wouldn't sign up. There were opinions it should have been twenty, should have been eighteen.

I am testifying to the truth and I didn't favor the $15.

Q But eventually by the method you have described, $15 was selected as a compromise?

A True.

THE COURT: May I ask a question here? It is about time for the recess and you can be thinking about it.

How did you arrive at that figure of $15 value of the stock?

A How did I arrive?

THE COURT: Yes.

A Your Honor, I think it was just a compromise between the figures of $12 and $18.

THE COURT: What was your estimate of the value of it?

A At that time?

THE COURT: Yes.

A I would say perhaps ten or $10.50 per share. Value of the stock?

THE COURT: Yes. How did you arrive at that value of $10 or $10.50 a share?

A Well, I think from the financial statements and by reason of the fact that there had been the figure compared with that mentioned at a

[1185] stockholders meeting.

* * *

\- - -

CHARLES E. RANEY'S sworn testimony on First Trial dated November 30, 1954

* * *

DIRECT EXAMINATION BY MR. FORD:

* * *

[2616] Q (By Mr. Ford, continuing) Now, fron 1940 to 1952, Mr. Raney, if any person wanted to buy stock in the Monroe Paper Products Company, how did he go about it?

A If a person wanted to buy stock?

Q Yes. Was it listed on the stock market?

A No, sir.

[2617] Q What was the method used in finding a purchaser, or if you had stock you wanted to sell, in finding a buyer?

A Well, if I may elaborate --

Q Go ahead.

A The stock was not listed on the stock exchange, and a party wanting to sell stock may contact a broker, and the broker would contact either myself at Monroe, or Governor Groesbeck, asking if we were in the market, or wanted to purchase the stock.

Q Well, what happened?

A Well, usually it was purchased.

Q Did Mr. Groesbeck from time to time increase his holdings of stock?

A Very definitely.

Q Did you buy stock from time to time?

A Yes, sir.

Q Did various other people, in the same way?

A I would have to call them friends of the Governor.

Q Would it be fair to say, Mr. Raney, that if we wanted to buy stock in the company, the best way to do is to ask Mr. Groesbeck if he knew where he could get some?

A That is correct.

Q All right.

A Eventually.

Q All right. Now, let us go to this annual meeting on September [2618] 25, 1952. I would like to call your attention to that resolution for the purchase of not more than 10,000 shares of stock, for the purpose of making a market for persons who might desire to sell, or words to that general effect. Do you recall the resolution I am talking about?

A I believe so, yes.

Q How did it come about that such a resolution as that was passed?

A Well, the Governor always felt that there should be a resolution or something available so that the stock could be purchased and retired by the company.

Q Over this period that we have been talking about when, as you say, Groesbeck was buying stock, occasionally you bought some and various other friends of the Governor bought some, did the company also from time to time buy in some of its own stock?

A Yes, sir. I believe, and I could check it with the minutes, but I believe that at that same meeting, that there was around 10,000 shares retired at the time.

Q That was stock that had been purchased already?

A Yes. Prior to that there was no resolution on the books.

Q All right. That was in September of 1952?

A Yes.

* * *

[2647] Q (By Mr. Ford) Did you participate about this time, September 1, 1953, in any discussion with Mr. Feinberg or with Mr. Krave with reference to the company purchasing any of its own stock, Mr. Raney?

A I believe it was in one of the directors' meetings in August when Mr. Feinberg made the statement if I used any company funds to purchase stock for retirement I would be sued.

Q If you use any company funds for the purchase of stock for retirement, you would be sued?

A That is correct.

Q That was said by Mr. who?

A Feinberg.

[2648] Q Did you have any discussion with Mr. Krave about it?

A In this manner, that one day Mr. Francis called me and said he had been advised by Mr. Krave --

MR. BRAND: I object to that, your Honor please, as hearsay.

* * *

THE COURT: You withdraw your objection?

MR. BRAND: I think so.

Q (By Mr. Ford) What did Mr. Francis say to you that Mr. Krave said?

A Essentially the same thing that Mr. Feinberg told me at a directors' meeting, that Mr. Krave had called him and told him that if Charlie used any company funds to purchase stock, that he would have the biggest lawsuit he ever heard of.

* * *

[2712] Q All right, now, as to the size of this inventory, apparently there is no doubt it is bigger now than it used to be?

A That is correct.

Q Now, why, Mr. Raney, why do you have it at its present size?

A For two reasons. The market on corrugated and the other grades was, from my experience, down to the bottom level. I knew that sooner or later there wouldn't be sufficient paper stock generated. The supply was beginning to dry up, and that we had certain dealers whom we wanted to protect and have them ship all the time. If we didn't do that, we may have to close the plant down, which we didn't want to do. We have a certain amount of civic pride that we like to keep our employees working and employed all the time that we can and, consequently, we bought materials at what I consider a fair level price, and in order to keep operating, our employees working, we converted a great deal of that into roll stock, as we call it.

[2713] Q Now, the increase in the size of the inventory must have started some time after June 30, 1953. Would it be a fair statement to say that sometime after that date is when it started to build up, the inventory of raw material?

A I don't recall the date that started to build up, without going back to the record.

Q When it started to build up, Mr. Raney, tell us whether or not it was your belief that the prices of the raw materials then were likely to increase?

A Definitely were.

Q And, in fact, have they increased?

A They definitely have.

Q What do you say as to how long the stuff that is in the yard now would keep your plant running?

A Now or as of June 30?

Q Let's have it now.

A I would say roughly 40 days.

* * *

DECEMBER 1, 1954

* * *

[2762] Q (By Mr. Ford, continuing) At the time when the National Container Corporation made this offer, or desired to get an option on stock for $10 a share, Mr. Raney, September 1 of last year, more or less, what did you consider the value of the stock to be?

A I certainly considered it worth more than $10 per share.

Q About what did you consider it to be worth?

A I would say at the minimum fifteen.

* * *

DECEMBER 9, 1954

CROSS EXAMINATION BY MR. BRAND, JR.

* * *

[2977] Q Why did you increase the order in October, November and December, 1953?

A I can't recall. I know the market was down, and we wanted to build up our inventory.

Q I am speaking of double line kraft corrugated cuttings.

A That is what I am referring to.

Q What prices were you paying Thomas then?

A In 1953?

Q October, November, December, 1953?

A Your record will show there.

THE COURT: Your answer is that you do not recall independent of the records?

A No, I do not.

Q (By Mr. Brand, Jr.) Why did you increase the order during [2978] March and April of 1954?

A Because we were anticipating a larger production of requirements of Kraft - double lined kraft, and I felt that the price was going to go up, and we wanted a sufficient inventory for a backlog.

Q So that in April, 1954, when you received over 1,300,000 pounds, that was because you felt you were going to need that much in production, is that right?

THE COURT: He gave two reasons.

One was that he anticipated an increase in production, and the other was that exercising his best judgment as of that date, he thought the price would increase.

That is what you meant to say, wasn't it?

A That is correct, your Honor.

MR. BRAND, JR.: What I am trying to find out is which is the primary one.

THE COURT: I do not know that it makes any difference.

Mr. Brand, I am having a little difficulty with this: As I recall, the testimony is that the largest inventory which they ever had would be completely consumed, if it was not replenished, in a period of eight weeks. At various points, you picked up that the inventory that they then had on hand would be consumed in a matter of four or six weeks. Is [2979] that about it, witness?

A Well, your Honor, counsel keeps referring to double lined kraft corrugated. Now, if we were to operate 100 per cent on double lined kraft corrugated, our inventory, I believe, showed around 1400 tons on June 30, and that would last about fourteen days.

* * *

DECEMBER 15, 1954

EXAMINATION BY THE COURT:

* * *

[3444] THE COURT: When did the prices at which you were selling the finished product start to decline?

A To the best of my recollection in the fall of 1953.

THE COURT: Do you think that it is evidence of good management to increase your inventory in a period of declining prices?

A It all depends, your Honor. I felt that the prices of raw materials were at the bottom, that they couldn't go any lower, they had to go up, and I think it is borne out, I think my thinking is borne out, because prices have increased.

THE COURT: What about the prices of the finished product?

A They have not increased. If we had not gone out and built up this inventory at lower prices, our profits would not be as much as they are today.

THE COURT: And it is your best judgment now that buying the raw material at what you call the bottom of the market, and converting [3445] it into the finished product, eventually will result in benefits to the company?

A That is correct. I also base my thinking along the lines of larger companies, one of which I am interested in, who increased their inventory over, well over a half million dollars from December, 1954 (1953) to June of 1954.

* * *

DECEMBER 21, 1954

* * *

DIRECT EXAMINATION BY MR. FORD:

* * *

[3905] Q (By Mr. Ford, continuing) I would like to read you this paragraph from Exhibit 189, the minutes of October 27, 1954, and ask whether this is a true statement of what occurred:

(Reading):

"Mr. Krave commented that he had observed the price of paper stock had advanced approximately $2 in the past few weeks, and that our inventory should have appreciated accordingly. Mr. Raney predicted that the increased value of [3906] the inventory was approximately $25,000, and that he believed it would continue to appreciate as the paper market had been at a low for the past six months. Mr. Kinsey confirmed these statements, but stated that he did not believe it good policy to purchase inventory for appreciation purposes."

A That is right. That is a correct statement.

MR. FORD: That is all. Thank you very much.

* * *

- - -

GEORGE A. BLUM'S sworn testimony on First Trial dated December 17, 1954

* * *

CROSS EXAMINATION BY MR. BRAND, JR.:

* * *

[3711] Q (Reading from deposition)

"Q. When did you first hear of this $15 a share provision that is in the voting trust?

"A. First hear of it?

"Q. How did that come about?

"A. Well, I don't know. I guess it was one of our meetings it was discussed, $10 was considered too low, and probably $20 was too high, so somebody suggested we compromise, so it was set at 15, thinking stockholders generally would be satisfied to sell under those conditions at 15."

Skipping about five lines to the bottom of the page:

"Q. Were you in favor of 15?

"A. I think probably I acquiesced in the 15 price. I don't know what was put up in such a manner, but I think people agreed generally 15 was a fair price, and most stockholders, if it came to a dealing with a good, reputable concern, [3712] would have been glad to have sold at 15."

* * *

- - -

ARTHUR W. SEMPLINER'S sworn testimony on First Trial dated January 20, 1955

* * *

EXAMINATION BY THE COURT:

* * *

[5692] THE COURT: In the typewritten copy of the voting trust agreement that you signed, was there any reference to $15 per share?

A Yes, to my recollection it was an identical copy to the printed copy.

THE COURT: Did you believe at that time that that stock was worth $15 a share?

A I believed at that time and believe now that it is worth more than $15 a share.

* * *

[5693] THE COURT: Let us take the first step. Did you purchase any stock between September 23rd and January 1?

A No, I did not.

THE COURT: Did any of your fellow directors purchase any stock during that period?

A Yes, they did.

THE COURT: Which ones?

A I knew that Feinberg, Krave and Grant had all purchased stock.

THE COURT: None of the other directors?

A I didn't know that any stock was being purchased in Monroe except, your Honor, some time about the 20 or the 21 of September I was told that the stock was being purchased in Monroe.

THE COURT: Did you know how much Krave, Feinberg,

Grant were paying for their stock?

A Yes, $10 a share, plus an override commission.

THE COURT: Do you know how many shares of stock they bought?

A I only knew the amount of money that they said they put up, and I could calculate the number of shares. It was $30,000 at the first offering.

THE COURT: Was the fact that Krave, Feinberg, and [5694] Grant were buying this stock at $10 a share the thing that -- well, strike that. You wanted to protect the small stockholders from those three men?

A I didn't think that any group of directors should go out and try and deliver a company to a buyer without taking it up at a stockholders' meeting.

THE COURT: Well, did you have any greater objection to Mr. Krave buying stock than you would Mr. Bennett, for instance, an employee?

A It depended on how it was done, your Honor. If it was done openly, in other words, if a stockholder came to the company offices and said, "I want to sell my stock," I would take the position that he would know who was buying it. However, if I went to a broker and told him to pick up as much stock as I wanted him to pick up without disclosing that I as a director was doing it, then I feel I am violating the law.

THE COURT: I see. Let me get that. You take it that it was Mr. Krave's duty to notify his fellow directors if he bought his stock?

A No, I take it it is his duty to notify the seller who was buying.

THE COURT: That is, he couldn't buy it through an agent?

A He could buy it through an agent, but the seller had to know who was doing it.

* * *

Q (By Mr. Brand) What of your own personal knowledge do you know about the existence of any escrow arrangement by Feinberg, Krave or anyone connected with them?

A I know that they told me in group that they were each putting up a sum of money and asked me if I would proceed to put up the money. I know that at a subsequent time they told me that that money had been expended for the purchase of stock and that more money was needed, and that a man by the name of Shapero, whom I checked on and found had a long criminal record, was putting up $50,000 to join in this escrow.

* * *

\- - -

deposition
JOHN P. KINSEY'S sworn/testimony on First Trial
dated May 20, 1954

* * *

CROSS EXAMINATION BY MR. SEMPLINER:

* * *

[973] Q Now, have you purchased for Waterbury Container Corporation any voting trust certificates in the Monroe Paper Products Company?

A No. You better phrase that differently. Have I purchased for Waterbury? No, I haven't.

Q Has anyone purchased for Waterbury?

A Waterbury has purchased some from Steiglitz, if that is the

way you want it said.

* * *

MAY 20, 1954

* * *

CROSS EXAMINATION BY MR. FRANCIS:

* * *

[988] Q Well, you are buying voting trust certificates, aren't you?

A Yes.

* * *

Q I asked you what is your purpose in buying voting trust certificates?

A Protect our interest.

* * *

\- - -

WILLIAM M. FLEISCHMAN'S sworn testimony on First Trial dated July 9, 1954

* * *

CROSS EXAMINATION BY MR. FRANCIS:

* * *

[1058] Q Are you active at the present time in the purchase of voting trust certificates for the Monroe Paper Products Company stock?

A We are.

* * *

Q And upon whose behalf are you purchasing the voting trust certificates?

A Stieglitz and Company, New York City.

* * *

A The original letter that we received from them made no mention of voting trust certificates. When we talked to owners of voting trust

certificates, I contacted Stieglitz to see if they were interested in purchas-
[1059] ing voting trust certificates. There was nothing in writing as to that, that I remember.

Q And what did Stieglitz and Company say?

A That they would buy voting trust certificates.

Q At what price?

A Up to $17.00, if I remember.

Q Have you or any other agent of Vogel & Company, to your knowledge offered to pay more than $17.00 a share for voting trust certificates?

* * *

A In two instances we paid $19.00 a share.

Q For the voting trust certificate?

A That is right.

* * *

[1064] Q (By Mr. Francis) Now, at the time that you purchased voting trust certificates, what, if anything, did you have the stockholders sign?

A An assignment form furnished us by Stieglitz, and also a demand form furnished to us by Stieglitz.

[1065] Q What do you mean by demand form?

A As I understood it, as I read it and looked at it, it is a form asking the committee to return the original stock to the stockholders.

Q In other words, everytime you purchase a voting trust certificate you have the stockholder or the holder of the voting trust certificate sign a written demand upon the trustees to return the voting trust certificate?

A That is correct.

* * *

[1127] Q (By Mr. Francis) Now, are Exhibits 129 and 130 the form that you used at all times in purchasing stock where there was a voting trust certificate?

A That is correct.

Q And where did you obtain these forms?

A From Stieglitz.

Q How did Stieglitz come to send them to you?

A When we bought voting trust certificates, they told me that those were to be attached and they would send the forms to me.

Q Now, witness, there must be some letter of explanation.

A They called me and said they were sending these forms and they would have to be attached to any voting trust certificates that we purchased.

[1128] Q Well, now, did you attach to the voting trust certificate both Exhibit 129, the assignment, and also the demand, Exhibit 130?

A I did.

Q How many copies of Exhibit 130 did you have the voting trust certificate holder sign?

A Two.

Q And what did you tell these voting trust certificate holders at the time that you had them sign Exhibits 129 and 130?

A That those would have to be filled out before we could take the voting trust certificates as good delivery.

Q And what did you explain to them as the meaning of "The undersigned hereby assigns to Stieglitz and Company all rights and causes

of action connected with said stock?"

A I didn't make any explanation.

* * *

- - -

(Sempliner Presentation to SEC.)

Trial Ex. 263

PRESENTATION

MONROE PAPER PRODUCTS COMPANY
MONROE, MICHIGAN

VOTING TRUST AGREEMENT

TRUSTEES

BURTON S. KNAPP
Monroe Paper Products Company
Monroe, Michigan

CHARLES E. RANEY
Monroe Paper Products Company
Monroe, Michigan

GEORGE A. BLUM
Monroe Paper Products Company
Monroe, Michigan

DON B. LEATHERS
Monroe Paper Products Company
Monroe, Michigan

HONORABLE ARTHUR W. SEMPLINER.
2005 Dime Building
Detroit 26, Michigan.

(Sempliner Presentation to SEC.)

SUMMARY

MONROE PAPER PRODUCTS COMPANY

VOTING TRUST AGREEMENT

. . .

HISTORY OF VOTING TRUST -

The Monroe Paper Products Company was founded on or about March 20, 1920, and is the smallest of three paper companies located in Monroe, Michigan. The Company manufacturers paper board for sale to paper box plants, and fabricates a portion of the board itself. The Company has approximately 275 employees, and as of August 1, 1954 had 396 stockholders, most of these being small stockholders, living in Monroe vicinity. The total number of shares outstanding was 186,668-1/2 shares. A recent appraisal showed a replacement new value of $7,130,644.00 and a net sound or depreciated value of $4,362,180.11. The book value per share based on this appraisal is $38.00 + on the replacement value and $23.00 + on the net sound or depreciated value.

In the early 1930s a rival company attempted to gain control of the Monroe Paper Products Company and thus acquire its facilities and business through causing a bank, with which the rival company had interlocking connections, to foreclose on the Monroe Company's indebtedness and force it to close. This illegal activity was discovered and court action prevented the fraud from being consummated. This had the result of causing the stockholders, who were largely the original investors, and local farmers, to become very familiar with management and

to be keenly interested in the affairs of the Corporation. An unusual situation in view of the fact that they were largely small stockholders.

In the Summer of 1953, it again became apparent that an effort was being made to defraud the stockholders. A group of the directors attempted to force the election of a president and to buy and sell control of the Corporation to outside interests. As there was over a half million dollars ($500,000.00) in cash on deposit, and as the price offered to stockholders for their stock was but Ten Dollars ($10.00) per share (the said stock is now being purchased from $17 to $20 per share) the remaining directors were fearful that the small stockholders would be defrauded, especially as the three directors did not disclose their position to the sellers.

The three directors persisted with their plans, however, and joined forces with an Attorney, Thomas Griffin, who has been general counsel of the Monroe Paper Products Company, to carry the plan through. Stock was purchased without disclosing to the selling stockholder that a group of directors was purchasing, and options solicited (see Exhibit C attached). Large paid display advertisements of high-pressure type (see Exhibits D and E attached) containing many misleading statements, were used. Mr. Griffin, who led this movement, is now a paid employee of the Waterbury Corrugated Container Company, which is trying to break up the present Voting Trust and gain control of Monroe Paper Products Company for the purpose of raiding its treasury (see Exhibit A attached hereto).

LACK OF GOOD FAITH -

It was soon apparent that the efforts were not in good faith. The stock was worth more than was offered, and the stockholders did not want to sell their Company. At the annual meeting September 23, 1953, over 99% of the stockholders were represented in person or by proxy, and the effort to sell out at that price was rejected.

SMALL STOCKHOLDERS FORM TRUST -

The better than Four Hundred (400) small stockholders then sought to find a way to maintain their Company from the four or five large stockholders and the three directors who had grouped themselves with Waterbury Corrugated Container Company, and to force a fair price for their stock. At the same time the plan of Waterbury Corporation to raid the Monroe Paper Products Company cash surplus (see Exhibit A) had to be thwarted. A voting trust was decided upon as the best means of protecting all stockholders. This was particularly for the benefit of the small stockholders, as Waterbury needed less than ten percent more stock to have over 50%, and the now Trustees, Mr. Raney, Mr. Leathers, or Mr. Sempliner, could have delivered this forthwith, by selling their holdings. Local Attorneys, who were not familiar with S. E. C. provisions, prepared the Trust, and the Detroit firm of Clark, Klein, Brucker and Waples reviewed and approved the same (see Exhibit B pages 1, 2 and 3, attached hereto). It was given full publicity in the local papers (as per Exhibit F attached hereto), and 341 stockholders, over 80% in number of all stockholders at the time, owning a majority of the stock, signed up. Currently this group comprises 85% of the 396 stockholders of the Monroe

Paper Products Company.

REGISTRATION WITH SECURITIES AND EXCHANGE COMMISSION -

As soon as the Voting Trust was complete, and the efforts of Waterbury Corporation and the other directors to raid the Monroe Paper Products Company Treasury, thus defrauding the small stockholders was thwarted, Waterbury brought suit in the Federal District Court at Detroit in an effort to break the Voting Trust. At the same time it is presumed Waterbury or its agents, complained, or instigated complaint to the Securities and Exchange Commission relative to the Trust, for the Securities and Exchange Commission contacted the Trustees of the Trust at this point. This was the first and only intimation the Trustees had that the Trust might be required to be registered. The Trustees felt that as there was no provision for personal gain, and as the Trust participants merely banded together for mutual interests, that no public offering was involved. Nevertheless, after one of the Trustees, Judge Sempliner, and the Attorney for the Trustees, Mr. Weipert, visited Washington in March, it was the intention to register to insure the validity of the Trust.

Shortly thereafter, two events took place which changed their plan to register, and made registration of no practical purpose. The Waterbury group began to solicit all Voting Trust Certificate holders to sell the same, paying $18.00 per share for the same (certificates representing over 10,000 shares have now been purchased by Waterbury) and at the request of the District Court at Detroit, an agreement was entered into providing that the Corporation and the Trustees would not

transfer the Voting Trust Stock until the Court could look into the matter, and decide its legality.

MAJORITY OF STOCKHOLDERS - (over 80%) IN TRUST -

The Trustees are not aware of any complaint re the Trust from any parties except those who have already sold to and are instigated by Waterbury. Here over 80% in number of all stockholders, in fact nearly all the small stockholders, have banded together in the Voting Trust to protect themselves. They are well informed on the affairs of the Company through previous experience, newspaper publicity (see Exhibit F), and solicitation by the various factions. In fact, all who want out of the Voting Trust can sell as of current date for upwards from $17 per certificate. The Trustees are willing to sell the entire trust at $15 per share if every stockholder can be offered the same price, but Waterbury is not interested in more than control. This leaves the large block of small stockholders at the ultimate mercy of Waterbury.

RE VIOLATION OF SECURITIES AND EXCHANGE ACT -

Insofar as the alleged violation of the Securities and Exchange Act by the Monroe Paper Products Company is concerned, i.e. their failure to register the Voting Trust Agreement with the Commission as provided by the Act, the violation was not a deliberate, conscious act on the part of the Corporation or the Trustees. Through an inadvertent oversight by the Corporation and the Trustees and its respective counsel, the Monroe Paper Products Company, together with the investment

of the small stockholders, is now being placed in jeopardy. The very existence of the corporate entity is at stake due to this omission to comply with the Securities Act. Upon the Commission's decision hangs the continued life of this Corporation and the continuation of the Monroe Paper Products Company as a local community enterprise consonant with the principles of free enterprise.

It is submitted that while non-compliance with the Act, for the sake of this presentation is admitted, the error under the unique situation present is harmless. For the Commission to now hold otherwise would violate the spirit and intent of the Securities Act and by administrative action accomplish the very injustice that the Securities Act was intended to prevent. This is particularly true, as the only complaint known, is that of the Waterbury group.

ABSENCE OF ILLEGAL INTENT -

The Voting Trust Agreement entered into between the stockholders and the Voting Trustees was not consummated with any intent to violate the laws of the United States or the rules and orders of the Security Commission. While the Agreement may have been performed illegally in that the parties failed to comply with the registration requirement of the Securities Act, it is not illegal per se, nor void in its inception. It falls into the category of legal agreements which have been performed in an illegal manner and should not in the absence of specific facts or acts which violate the tenor of the Securities regulations, be voided. There was no agreement or knowledge as between the parties

that anything should be done in violation of existing laws. Illegal performance should not invalidate the Agreement between the parties that was legal when made.

PRESENT VIOLATION OF SECURITIES AND EXCHANGE ACT BY OPPOSITE GROUP -

On behalf of the Corporation and its management it is further argued that in view of the circumstances existing at the time, the device of a voting trust was the only method whereby the interests of the stockholders could be protected from powerful groups from within and without, who were seeking to achieve control of the Corporation in furtherance of individual financial gain, to the detriment of the majority of stockholders. The Voting Trust was a clear expression of the stockholders' faith in existing management and their need in the corporate interest, of continuity in management. It was the only available method whereby stability of the corporate entity could be assured. Even at the present time Waterbury Corporation, and its directors, are purchasing Monroe Paper stock without disclosing their management interests to the sellers.

LACK OF PERSONAL GAIN -

There has been no showing, nor does one exist, that the directors and/or trustees under the Voting Trust entered into have used the Trust Agreement for personal gain - unless it is considered that continuity in management inures to the personal benefit of the directors. The sole purpose of the Agreement was and is to protect the

interests of the stockholders from usurpation by a dominant outside interest who by their own admission in an application for a loan of $700,000.00 (which Exhibit A is attached hereto), planned to obtain control of the Monroe Paper Products Company, and in turn to sell to the Monroe Paper Products Company stock in its own corporation to repay the loan, all to the detriment of the interest of the stockholders of the Monroe Paper Products Company, and a rank fraud.

It is further submitted that the alleged violation of the Securities Act does not constitute a continuing violation whereby this Commission should take action to set aside the Agreement. The law specifically provides adequate relief to any stockholder under the Voting Trust who feels that his best interests have not been served and protected by the Voting Trust Agreement. This Commission by any affirmative action it may now take will thwart the purpose of the group which the Congress deemed wise to protect. Such action would practically hand control of the Monroe Company, with its subsequent deprivation of the stockholders' interests, to the Waterbury group. Surely the Commission will not by its action be a party to such a fraud and conspiracy. That the actions of John P. Kinsey, Charles Feinberg, Hugo Krave and others, as directors of Monroe Paper Products Company, in accumulating a large block of stock for sale to a foreign corporation and the using of their position as directors of Monroe Paper Products Company, and the knowledge they obtained as directors of Monroe Paper Products Company, was contrary to their fiduciary duties and ultra vires to their position as directors of Monroe Paper Products Company, and a fraud upon the stockholders.

That the purpose of accumulating such a block of stock and control was to make the balance of the stock of lesser value and of small import in the voting of stockholders of the Company, and thus be able to purchase said stock at a depressed price, and therefore such action on the part of the said directors was illegal and a fraud upon the stockholders of the Monroe Paper Products Company.

(Waterbury Bank's Memo re Plaintiff's Loan Application)
Depn. Ex. 113-A

APPLICATION from Waterbury Corrugated Container Company for loan of $700,000.00. Note to be endorsed by Mr. Kinsey, Kunkel and Mr. Banta and to be repaid at minimum rate of $200,000 per year on a quarterly basis of $50,000.00 each quarter plus interest. Company will agree not to hypothecate or pledge, mortgage or encumber any of its assets during term of the loan.

PURPOSE To purchase controlling stock of the Monroe Paper Products Company of Monroe, Michigan, a company who altho not competitive due to distance, are engaged in the same type of business, owning Real Estate which includes 50,000 square feet of mill floor space reported to be in good condition together with the necessary machines to convert waste paper into "Jute" and fabricate corrugated box containers of all description. Forty-eight per cent of the voting stock is owned by the Estate of the late Governor of Michigan. This stock together with an additional 4% which they feel that they can acquire would give them the necessary control. They plan to bid approximately $9.50 per share for same. See attached consolidated statements for 5 years both balance sheets and profit and loss statements as prepared by S. L. Moss, independent Certified Public Accountant. Book Value of stock as of June 30, 1953 reported to be 10.13 per share.

Mr. Kinsey reports that if control can be obtained they plan to sell some Waterbury Corrugated Container stock to this Monroe Company in the amount of two to three hundred thousand of dollars in order to reduce this loan at a more rapid rate as he feels they do not need the amount of working cash that the statement shows. He further plans to

(Waterbury Bank's Memo re Plaintiff's Loan Application)

Depn. Ex. 113-A

change management which he claims is weak and inefficient at the present time. He further states that Book Values on Real Estate and machinery are very conservative and this seems to be true on the basis of an examination of their insurance records which discloses that as of June 30, 1953 the company was carrying $3, 337, 000. 00 Fire and Extended insurance on their buildings and contents.

The Waterbury Corrugated Container Company's latest statement for the fiscal year ending June 30, 1953 has not as yet been completed by the accounting firm of Peat, Marwick, Mitchell and Company. An examination however of the 1952 statement discloses the following items:

(Opinion re Voting Trust)

Depn. Ex. 30

Clark, Klein, Brucker & Waples
Detroit 26, Michigan

November 25, 1953

Mr. George J. Huber, Chairman
Stockholders' Committee
Monroe, Michigan

Dear Mr. Huber:

We have been advised that at the annual stockholders' meeting of Monroe Paper Products Company held September 23, 1953 approximately 77,000 shares out of 186,671 shares, or approximately 42% of the stock, were represented by a group which was not friendly to the management. We are also advised that since that time this block of stock, controlled largely by one estate, was sold to Waterbury Corrugated Container Co. of Waterbury, Connecticut, whose nominee is now on your Board. At the annual meeting approximately 54% of the stock favored the management and was voted in a block, resulting in the continuance of the present management. We are also advised that effort has been made and will continue to be made to acquire additional shares of stock on behalf of minority interests, giving them actual control as well as working control, and accordingly the management and many of the stockholders friendly to management feel that ultimately a sale of the controlling interest in the Company will be advisable provided a fair price is obtained for the stock, your thought being that the price should be between $15 and $18 per share, as against the $10 price which was offered to stockholders generally about the time of the annual meeting.

You have requested our opinion as to what type of stockholders'

deposit arrangement might be entered into whereby the deposit by the majority stockholders of their shares might be solicited under an agreement to deposit the shares with a committee accompanied by blank assignments under authorization to sell the controlling interest as a part of a block at the most favorable price obtainable, but not less than say $15 per share. It is contemplated that such agreement provide that the committee be authorized to raise a fund from its members as may be required so as to have funds available to purchase outright any stock coming on the market in hardship cases before negotiations for sale of the control can be effected.

Generally spe king, the scheme above set forth and outlined to us is possible of accomplishment. An agreement may be entered into by the stockholders electing to join with the group to accomplish the above purposes. In order to accomplish these purposes it would be necessary for the shareholders to execute stock powers, attach the same to the stock certificates, and deliver them to an agreed depositary to hold pursuant to the terms of the agreement. For purposes of this opinion, we are not outlining what the terms and conditions of such an agreement should be, but are confining ourselves to the statement that an agreement properly drawn is enforceable.

The foregoing has certain objections; particularly, as we conceive it, the objection that so long as the stock stands in the name of a stockholder it can be sold to an innocent holder for value notwithstanding his being a party to the agreement, and the other stockholders party to the agreement would have as their remedy only a suit against the selling

stockholder for damages. It has the further objection that as a practical proposition it would be almost impossible to have all of the shareholders, other than the Waterbury Corrugated Container Co., deposit their shares under the foregoing plan. If you fail to receive more than 50% of the shares of stock, other than the Waterbury stock, the entire scheme would not be practical as it would only lead to a contest between Waterbury and the controlled group of stockholders to acquire the shares of non-depositors, and in view of the fact that such a large block is owned by Waterbury, it would not be an insurmountable difficulty for them to acquire enough shares to get actual control of the Company.

There is under Michigan law another alternative which we think is very much better than a simple agreement as above outlined. This is provided for in Section 34 of the General Corporation Laws of Michigan, which provides for voting trusts. Under this provision the shareholders may by agreement in writing deposit shares of capital stock with or transfer the shares of capital stock to any person or persons or corporation for the purpose of vesting in such person the right to vote thereon or for such other lawful purposes as may be agreed for any period of time not exceeding ten years upon terms and conditions stated in such agreement.

Assuming that a Voting Trust Agreement is executed by more than 50% of the shares of stock of the Company, the following procedure could be adopted: One or more persons could be appointed Voting Trustees with definite instructions set forth in the Voting Trust Agreement, which in your case would provide for a sale of the shares by the Voting

Trustees as a block, at a price to be agreed upon by the Voting Trustees, but not less than a minimum set forth in the agreement without the consent of the depositing stockholders. Provision can be made for a meeting of the depositing stockholders to direct the Trustees, or it can be provided that direction be given in writing to the Trustees, in the event of an offer for the trusteed block of shares. Upon the execution of the Voting Trust Agreement by the stockholders and the Trustees, the Trustees will issue Voting Trust Certificates, which Voting Trust Certificates will go to the stockholders depositing their shares and will entitle them, upon the termination of the Voting Trust, to have returned to them the number of shares originally deposited or the sales price therefor. The Voting Trust Agreement can provide for the payment of expenses of the Voting Trust, and can also provide that the Trustees may acquire distressed stock for the benefit of the Voting Trust and charge to each of the Voting Trust Certificate holders their proportionate share of the cost of acquisition of such additional shares, in which event each of the depositing stockholders would be entitled upon termination of the Voting Trust to a pro rata share of the stock so acquired, subject of course to the payment of the pro rata share of costs.

The advantages of a Voting Trust must be quite apparent. First, the time can be limited to any period from 0 to 10 years, depending upon the desires of the stockholders. The legal title to the shares of stock will be vested in the Trustees. They will have the right to give proxies and to vote the shares at annual meetings. The Voting Trust Agreement can provide either that they exercise their judgment in voting

for directors, or that they vote for the nomination and election of specifically predetermined directors. The Voting Trust Certificate holders then have a paper which is representative of their shares, is transferable, but only subject to the terms and conditions of the Voting Trust Agreement, and will not entitle the Voting Trust Certificate holders to a termination of the Voting Trust Agreement merely because the Voting Trust Certificates are sold and disposed of. Also, it is possible in the Voting Trust Certificates and in the Voting Trust Agreement to provide that no sale of Voting Trust Certificates can be had unless first the selling Certificate holder offers the shares to the Voting Trustees for a specific period of time within which the Voting Trustees will have a right to purchase the shares at the offered price, and restrictions can be put into the Voting Trust Agreement that the Voting Trust Certificate cannot be transferred at a lower price without first again offering the same to the Voting Trustees for a period, which should be shorter than the first period above mentioned. There is an added advantage in that a Voting Trust Certificate holder could borrow money upon his Voting Trust Certificate exactly as he could on the actual shares of stock, except that probably the loan value would be less because restricted as to the time when the actual shares of stock are deliverable to the Voting Trust Certificate holders upon dissolution of the Voting Trust.

Obviously, in an opinion which is as short as this must be to serve your purpose, we do not delineate all of the provisions which may be put into a Voting Trust Agreement, but the Voting Trust arrangement, in our judgment, would serve your purposes better than a mere agreement

such as you outlined to us several days ago.

If you have any questions with reference to this opinion or the matters which you desire to accomplish, please call the writer on Friday morning and we will either supplement this opinion or amplify to you over the telephone.

Very truly yours,

George H. Klein.

GHK/B

Exhibit C

EXCLUSIVE OPTION TO PURCHASE STOCK

The undersigned, in consideration of One Dollar and other Considerations of value, receipt whereof is hereby acknowledged, and in consideration of other stockholders signing similar options as this one, hereby give (s) and grant (s) to THOMAS E. GRIFFIN, Attorney at Law, of Monroe, Michigan, the exclusive option to buy _____ shares of common capital stock of Monroe Paper Products Company, a Michigan corporation, of Monroe, Michigan, and which stock the undersigned warrant (s) is free and clear from all encumbrances whatsoever, and that the undersigned has (have) full authority to sell said stock.

If the option is exercised, as hereinafter provided, the undersigned shall receive, in cash, Ten ($10.00) Dollars net per share for said stock. In addition to the Ten Dollars net per share, the undersigned also reserve(s) the dividend declared by the Board of Directors of Monroe Paper Products Company payable to stockholders of record on September 1, 1953, and payable on September 15, 1953.

This option shall be good for a period of thirty (30) days from date. If the option is not exercised by the optionee within that period of time, the undersigned shall have no obligations whatsoever to sell this stock.

If the said Thomas E. Griffin exercises this option within the time limited above, he shall do so as follows: Notify the undersigned, in writing, that he exercises this option, and the undersigned shall forthwith deliver the certificate or certificates of stock covering the common capital stock above set forth to The First National Bank, a federal banking

(Exclusive Option to Purchase Stock)

Exhibit C

corporation, of Monroe, Michigan, which is the designated escrow agent, and such stock shall be delivered by the undersigned to said designated Bank and the undersigned shall comply with the following requirements:

1. The certificate or certificates with draft attached shall be sent to the said Bank or personally delivered to said Bank, which certificate or certificates shall be endorsed in blank, properly signed by the undersigned, with signature(s) guaranteed by a bank, or accompanied by appropriate stock power duly executed in blank, with signature(s) guaranteed.

2. With the delivery of the stock certificate or certificates in accordance with the above, the undersigned shall also execute and deliver a proxy to the said designated Bank, irrevocably designating Thomas E. Griffin as proxy to vote said stock at any time and at all meetings of the stockholders of Monroe Paper Products Company, as he shall see fit, and which proxy shall revoke all prior proxies theretofore given.

3. That upon depositing said stock certificate or certificates, together with said proxy, fully complying with the above, with the said Bank, the undersigned shall immediately receive from said Bank Ten ($10.00) Dollars net per share for all stock so deposited, provided that the escrow agent and the purchaser shall first have an opportunity to examine said certificates to see that the requirements for transfer have been met by the undersigned, but in no event shall the purchaser have delivery of said stock without first paying to the undersigned the said purchase price for said stock.

(Exclusive Option to Purchase Stock)

Exhibit C

4. This option also includes, as though fully set forth, the letter accompanying this option.

It is understood that the undersigned shall not be charged with any expense whatsoever in connection with the transfer of this stock, including, but not limited to brokerage fees, attorney fees, finder's fees, or stock transfer tax, but that all such expenses and charges shall be paid to said optionee by the prospective purchaser.

IN WITNESS WHEREOF, the undersigned has (have) hereunto set (his), (her), (their) hand(s) and seal(s) this _____ day of _____, 1953.

Signed, Sealed and Delivered
in the Presence of

_____ L.S.

_____

_____ L.S.

_____

RE: MONROE PAPER PRODUCTS COMPANY STOCK

STATEMENT

The following letter dated September 2, 1953 was sent to all stockholders of Monroe Paper Products Company. The writer is the legal representative in this matter of three directors of Monroe Paper Products Company and also the Estate of former Governor Alex J. Groesbeck. These four interests constitute four of the top management of this Company for the past years. Alex J. Groesbeck was, until his death on March 10, 1953, the president and director of the Company. These interests own or control approximately 40% of all the stock of this Company. The stockholders of this Company can be sure that the proposed sale to National Container Corporation is for the best interests of all since those with the greatest interests and long knowledge of the Company believe it to be a sound transaction. The letter is as follows:

E-59
4/7/54

To All Stockholders of
Monroe Paper Products Company
Monroe, Michigan

Dear Stockholder:

The writer is the representative in Monroe of the estate of Governor Alex J. Groesbeck. The Governor, as you know, was president of Monroe Paper Products since 1935 and was greatly responsible for the growth and success of this corporation since that time. His estate is faced with the necessity of liquidating the Governor's stockholdings. Certain other business associates of the Governor in Detroit, who also invested in this Company at the solicitation of the Governor, want to sell their stock along with the Governor's interests. These interests collectively represent approximately 40% of all the stock of Monroe Paper Products. In our endeavor to dispose of this stock, we thought it only fair to all stockholders of Monroe Paper Products Company to get for them the same price and the same conditions for sale as we get for this large block. We received some offers from other corporations to buy only 51% of the stock and we refused all of those offers.

We now have an offer from the National Container Corporation, one of the largest producers of paperboard in the country. Their offer, briefly, is as follows:

(a) They will pay $10.00 net per share, in cash to the stockholders.

(b) You, as the present stockholder, will retain the dividend to be paid by the Company on September 15, 1953, in the amount of fifteen cents per share.

(c) National Container will buy 95% to 100 % of the stock if that amount is obtained by us by September 21, 1953.

(d) If we do not produce by the above date that amount of shares, they are bound to buy if we produce 55.6% of the stock.

(e) If between September 21, 1953 and October 30, 1953, we are able to obtain the difference between 55.6% and 95% of the total shares, they will pay the same price per share as for the first group. If they do not get the entire balance as above specified by October 30, 1953, they will not buy the same, but will only keep the 55.6% of stock.

(f) All expenses connected with the sale are to be paid by National Container, so your total net per share would be $10.15 which includes the dividend to be paid by the Company.

(e) If between September 21, 1953 and October 30, 1953, we are able to obtain the difference between 55.6% and 95% of the total shares, they will pay the same price per share as for the first group. If they do not get the entire balance as above specified by October 30, 1953, they will not buy the same, but will only keep the 55.6% of stock.

(f) All expenses connected with the sale are to be paid by National Container, so your total net per share would be $10.15 which includes the dividend to be paid by the Company.

The actual handling of your stock certificate will be as set forth in the enclosed option and you will retain your stock until notified by me to deposit the same with the First National Bank of Monroe, Michigan, for checking by a representative of the National Container Corporation.

The First National Bank of Monroe is acting solely as a depositary for the National Container Corporation funds and as a depositary for the individual stockholders who deposit their stock with the Bank. The Bank has no interest in any way in the entire matter, other than simply acting as a depositary as above stated.

If you prefer not to sign the option, you may forthwith deposit your stock with the First National Bank, properly executed, and they will give you a receipt for the stock. In no event shall your stock certificate be delivered to National Container without first your being paid by the Bank for your stock, no matter which procedure you follow. We will require a few days after your stock has been deposited to examine the stock certificates to see that they are properly executed and to determine the percentage on deposit. As soon as that is ascertained, the payments will be made.

If we obtain options for and/or have deposited in the First National Bank, either 55.6% of the stock or 95% of the stock, by September 21, 1953, properly executed by the stockholders, National Container is bound by contract to buy the stock at the price indicated. If such block of stock is obtained and when you are paid for your stock by the First National Bank, you will then sign an irrevocable proxy appointing me your proxy to vote your stock. If less than 55.6% is obtained by September 21, 1953, National Container is not obligated to buy the stock and your stock certificates will be returned to you.

If the second block is obtained as above specified, the purchase of the stock will be handled in the same manner as the first block.

In short, therefore, the first 55.6% of the outstanding stock will be purchased and I urge you to get your stock in to the Bank as quickly as possible, or sign the option and return it to me in order that you may be within the 55.6% group.

As you well know, Monroe Paper Products stock is an unlisted stock and in the past had practically no market for the sale of it. In other words, it is very difficult to liquidate the stock and difficult to borrow on it. The offer herein made by National Container is approximately 25 to 40% higher than this stock has ever sold for in at least the last fifteen years.

I personally believe, and so do the executors of the Groesbeck Estate, that this is a marvelous opportunity for the stockholders of this Company to liquidate their stock at a good profit. No one, of course, would pay this high a price for the stock in this Company, as National Container has offered to pay, unless they desired to operate the Company.

National Container Corporation has assured me that all present personnel of Monroe Paper Products will be retained and that the general manager will be offered a contract.

If you care to check with your banker or whomever advises you on investments, I am sure that they will agree that this is a great opportunity for the stockholders. They can also help you with the details of forwarding the certificates or option. Again I urge you to act promptly in order that all of us may take advantage of this splendid opportunity. If there are any further details that you want on this, please contact me.

Very truly yours

Thomas E. Griffin
Attorney At Law
29 Washington
Monroe, Mich.

1/8/53

EXHIBIT D

(Advertisement by Thomas E. Griffin,
Monroe Evening News of Sept. 14, 1953)

Trial Ex. 16

MOND ... 14, 1953 ... MONROE EVENING NEWS

TO ALL SHAREHOLDERS OF MONROE PAPER PRODUCTS AND TO ALL RESIDENTS OF MONROE

TRIAL EXHIBIT NO._____

LET'S TALK FACTS

This statement is made to protect the true facts underlying the proposed purchase of the common capital stock of Monroe Paper Products Company by the National Container Corporation, and the interest of the Groesbeck group in connection therewith. It is compelled by statements appearing in the Monroe Evening News under the sponsorship of a purported "Stockholders Committee."

By inference, the committee has questioned the propriety of my representing the estate of the former president of the Company, Mrs. Alex J. Groesbeck, personally because I was retained for the [illegible]

[illegible] to protect the interest of the [illegible]

[illegible] that it was to the best interest of the [illegible] Monroe Paper Products did I agree to make it possible — and then only under the following conditions:

1) That [illegible] and equitable offer be made to the [illegible] regardless of the number of shares sold.
2) That said offer and reasonable offers made to the [illegible] which may be made to all other shareholders, regardless of the number of shares sold.
3) That all other shareholders be given equal opportunity to accept the same terms of sale as my trustee, without favoring Monroe Paper stock held by the estate.

In addition to the above items relating directly to the sale of stock, the administrators also agreed to the following operating conditions:

1) That present management be retained.
2) That all employees presently working for Monroe Paper also be retained.
3) That we as owner demonstrate the sincerity of [illegible] in the community welfare by outlining plans for the continued growth and development of the company.

As further evidence of our fair approach to liquidating the estate's shareholdings, it will interest [illegible] that we have turned down several offers involving a sale to others. It is unlikely that we could have easily obtained [illegible] but we did not accept such proposals because we felt they were not fair to the small shareholder.

THE NATIONAL CONTAINER OFFER

The National Container Corporation offer is made to all shareholders of the [illegible] under the same conditions as [illegible] The price offered by National Container is [illegible] per share, which with the [illegible] December 15th dividend, gives the liquidating shareholder a net of $10.15. To the best of our knowledge, this offer is 30% to 40% higher than any recorded sale of the stock in the past [illegible] years. Moreover, Monroe Paper Products is an established [illegible] stock and the removal of additional [illegible] from [illegible] shareholders are given an opportunity to reinvest their funds in the shares of companies whose stocks are listed and whose dividend record is both stable and offering a considerably higher return.

The [illegible] and unwarranted attack by the so-called Stockholders Committee can only be recognized for what it is — a rather tired red herring. We readily admit, what everyone already knows, that it would cost a great deal to replace the present Monroe Paper Products plant and facilities. But no one proposes to replace it. National Container is buying a 39 year old plant, with going organization — this unit of which presumably has been advantageously amortized — at a reasonable and fair price.

THE EXCLUSIVE STOCK OPTION

With reference to the exclusive stock option sent to shareholders, the so-called stockholders Committee states weakly, "... shareholders might possibly feel that one of [illegible] purposes, even though indirect, is to assist the present management [illegible] to retain control of the company." [illegible] The fact remains that [illegible] of the stock [illegible] Bank and Trust Co. [illegible] vote their stock [illegible] vote your stock, it will [illegible] by September 11, 1953. National Container is not obligated to buy the stock and your stock certificate will be returned to you."

Further, Section 8 of the option itself protects shareholders until the stock is actually paid. And finally, the Michigan law is most clear on this point and fully protects shareholders against this imaginary danger cited by the committee.

THE SO-CALLED STOCKHOLDERS COMMITTEE

1) That present management be retained.
2) That all employees presently working for Monroe Paper also be retained.
3) That we as owner demonstrate the sincerity of [illegible] in the community welfare by outlining plans for the continued growth and development of the company.

THE SO-CALLED STOCKHOLDERS COMMITTEE

It is interesting to note that the appointed and self-appointed Stockholders Committee which signed the ad in the Monroe Evening News last week, consists of twelve people and, according to the most recent published figures, holds about 4,000 shares — less than 1% of the total shares outstanding. It would seem more pertinent for this little management-inspired clique to offer positive action to help the company and its stockholders instead of negative and unfounded criticism.

THE GROESBECK GROUP

On the other hand, the [illegible] shares I am presently holding will be voting [illegible] shares and approximately [illegible] shares of the company's [illegible] of [illegible] shares. Additionally, [illegible] who will also [illegible] are owned by small shareholders. We call a stop stockholders committee — with a positive, practical program in the shareholders interest.

WHY SELL TO NATIONAL CONTAINER?

The fiscal ability and attributes of selling to National Container should not be determined by which group holds the controlling number of shares. The sale should be considered chiefly on the basis of the merits of the offer and the resulting overall benefits.

First of all, this unsolicited offer could not happen [illegible] We're not "selling out" to the highest commercial bidder of the paper industry. Paper manufacturing and processing have always been important in Monroe. Now they can rely on added importance — new prospective ownership and the stability that only comes with strength and diversification of product. Why sell to National Container?

HERE'S WHY

1) The sale is a good deal for stockholders. The price is fair — even generous. A market for your shares has been created, and every shareholder will be treated alike. For the first time in fifteen years, you can dispose of your stock at profit and reinvest your funds at a more favorable rate of return.

2) The sale is a good deal for employees. National Container enjoys a nation-wide reputation for its employee program which is broader in scope than that of Monroe Paper Products. The workers lose no benefits — they gain many, including a sound pension plan, working conditions, stability of employment, plant facilities, opportunities for advancement will benefit by association with National Container.

3) The sale is a good deal for Monroe. It is good for the whole community and good for the surrounding area. We all know how much our community welfare depends on stable operations of the paper companies. National Container has 17 plants across the country — numerous sales offices to feed orders into Monroe. Its net worth is [illegible]; its sales last year exceeded $[illegible]. It has strength to weather any difficult days ahead.

National Container has already made tentative plans to modernize and improve the present facilities in Monroe.

The management-inspired clique or so-called Stockholders Committee is taking upon itself grave responsibilities indeed. It is no small matter to jeopardize the investment of many shareholders and to toy with the economic progress of a whole community. Monroe Paper Products Company can no longer lean heavily on a war-time economy. Now it must look for aggressive management leadership, strong financial backing, and improved operations if it is to prosper in the competitive days ahead. These are the benefits National Container Corporation will bring to the company. Let us hope the the selfish interest of a few people will not supplant individual and community responsibility.

THOMAS E. GRIFFIN
Attorney at Law
Monroe, Michigan

Depn. Ex. 37

(p.258a)

(REPRINT FROM THE MONROE EVENING NEWS, TUESDAY, FEBRUARY 9, 1954)

Five-Year Agreement Seeks To Avert Proxy Battle

Most Paper Products Stock Put in Voting Trust

Majority stockholders of the Monroe Paper Products Co. have deposited their stock with trustees under a voting trust agreement, it was announced today by the Monroe State Savings Bank, in a move designed to provide stability and continuity of management. The trust department of the bank is named as depository in the agreement which now has been closed to further subscriptions with more than 50 per cent of all stockholders, owning a total of more than 50 per cent of all outstanding stock, represented.

Named as voting trustees in the agreement, which runs for a period of five years, are four local stockholders who also are officers and directors of the company, and a fifth Detroit stockholder. They are Burton S. Knapp, president of the company; Charles E. Raney, vice president and general manager; George A. Blum, secretary-treasurer, and Don B. Leathers of Monroe and Arthur W. Semplmer of Detroit, directors.

Acting in their capacity as stockholders, the five trustees hold title to all deposited stock and will have voting power for the stock. They receive no compensation. Stockholders who have deposited their stock at the bank under the agreement will receive certificates which entitle them to all dividends paid by the company on the deposited stock. The trust certificates are negotiable.

The trust agreement was drafted by the Monroe law firm of Welpert & Welpert and is the outgrowth of the company's efforts to stabilize its management by preventing, in the future, the annual repetition of "proxy fights" such as occurred last September.

The death of Alex J. Groesbeck, president of Monroe Paper Products Co. and a major stockholder with other Detroit interests, precipitated an unprecedented proxy battle in Monroe last year. Detroit representatives held a substantial minority block of company stock and became interested in sale of a controlling stock interest to the National Container Corp. However, the group failed to obtain a controlling interest and management was sustained in the annual meeting of stockholders.

A record turnout of 98 per cent of the 126,671 outstanding shares of stock was represented at the Sept. 28 annual meeting. All four Monroe directors were re-elected in addition to Hugo Krave, Harry S. Grant and Charles E. Feinberg, all of Detroit. Mr. Semplmer replaced Joseph A. Moynihan Jr. of Detroit on the board.

Subsequently a Detroit block of stock was sold and now stands on the company books in the name of Bender & Co. of New York City, John P. Kinsey and Lawrence G. Kunkel of Connecticut. Mr. Kinsey was elected to the board of directors three months ago, replacing Mr. Grant of Detroit.

While the voting trust agreement was in process of formation, it was learned by George J. Huber of Monroe, chairman of a stockholders' committee promoting the voting trust, that Mr. Kinsey privately was circularizing two letters to stockholders expressing opposition to the trust. The letters were mailed in Monroe and bore a Monroe postoffice box address. The second letter, according to Mr. Huber, was on the letterhead of the Waterbury Corrugated Container Co. of Waterbury, Conn., of which Mr. Kinsey is an officer.

This letter indicated that the Waterbury company was the real owner of the block of shares which are still in the name of Bender & Co. The disclosures of the second letter, although it did not contain an offer to buy additional shares of stock necessary to obtain control, spurred the formation of the voting trust agreement. Offers to buy stock have been made, Mr. Huber said, to at least two large stockholders to prevent their joining the voting trust.

A court test on the voting trust agreement now looms. Feb. 2, Mr. Kinsey, Mr. Kunkel and the Waterbury Corrugated Container Co. filed suit in Federal District Court at Detroit against the five directors, Mr. Huber and the Monroe Paper Products Co. The suit seeks to have the voting trust agreement dissolved. Plaintiffs in the federal court action are represented by Detroit attorneys, George Brand and George Brand Jr.

Hugh Francis, Detroit attorney for Monroe Paper Products Co., and Welpert & Welpert of Monroe represent the defendants.

(Weipert - SEC Letter)

Trial Ex. 262

WEIPERT AND WEIPERT
Attorneys at Law
Monroe, Michigan

August 9, 1954

Walter G. Holden, Esq.
Assistant Director
Division of Trading and Exchanges
Securities and Exchange Commission
Washington 25, D.C.

Re: Monroe Paper Products Company Voting Trust

Dear Mr. Holden:

Following our August 4 appearance before the Securities and Exchange Commission, you requested information as to the number of shares deposited under the Voting Trust Agreement, for which original voting trust certificates were issued for the first time from and after March 17, 1954.

The records of the Monroe State Savings Bank, depositary under the Voting Trust Agreement, show that on March 17, 1954, the following voting trust certificates were issued:

#351	3296 shares	Dorothy L. Kampe
#352/9	7203 shares	Ida M. Sempliner

We should explain, as to the above, that the Kampe and Sempliner voting trust certificates, representing a total of 10,499 shares, were included in the computation furnished to you on March 17 in Washington, by Mr. Sempliner and myself. They made up part of the 51-1/2% plus of the outstanding stock, given to you then as deposited under the Voting Trust Agreement and for which voting trust certificates were issued and outstanding. Although the voting trust certificate stubs show that the

bank did not actually date the certificates until March 17, the stock had been deposited some time before that date.

Mrs. Sempliner is Arthur Sempliner's mother, and Mrs. Kampe is the sister of Don Leathers, another voting trustee. Both had signed the Agreement itself a considerable time before, but were travelling and had delayed sending in the stock itself. When Mr. Sempliner and I were at your office, March 17, we had been advised that the stock was at the depositary bank and trust certificates were being issued, and therefore included the same in our tabulation.

Possibly Mr. Rakow's computations, made at the bank some months later, did not make this time sequence clear to you. We hope that the above will clarify it.

From March 17, 1954 to date the following shares of stock have been deposited and voting trust certificates issued to the depositors on the following dates:

March 19	175 shares	Theodore Bloomfield
March 20	94 shares	Mrs. C. F. Lauther
April 9	187 shares	Clarence W. Reinhardt
April 26	82 shares	J. M. Nichelson
June 28	94 shares	Herbert C. and Charlotte Bodamer

The last-mentioned issuance of voting trust certificate, for 94 shares on June 28, was not known to the writer before. We find upon inquiry from the depositary bank that it came about under these circumstances. Mr. Bodamer on the date in question advised the trust officer, Mr. Boudinet, that he desired to sell these 94 shares to the broker for the Waterbury Company, but that the broker was willing to pay the same

amount for either the original stock certificate (which Mr. Bodamer still held then), or for the voting trust certificates. Although Mr. Bodamer could have sold the original certificates, he had no complaint about the Voting Trust Agreement which he had executed earlier, and wished to live up to it by depositing his shares, obtaining voting trust certificate and then exercising his rights thereunder and selling the latter certificate. To accommodate him the depositary accepted the late deposit and issued voting trust certificate.

None of the other voting trust certificates, issued on or after March 17 as above listed, have been sold to our knowledge. These parties had executed the Voting Trust Agreement prior to its closing on February 9. They came in voluntarily on the dates indicated and deposit was accepted for their accommodation. The Voting Trustees did not benefit in any way, since under any interpretation of the Voting Trust Agreement 50% had been reached, both in signatures and in deposits, prior to March 17.

Should you desire any further information we shall at all times exert ourselves to furnish the same immediately.

Please accept our thanks for making it possible for our clients and the writer to appear before the Commission. If additional copies of the written presentation could be used, we will be glad to have such made, or to elaborate on any matter not sufficiently covered.

The following points in particular we had intended to cover more in oral presentation than time allowed:

It is our hope that the Commission will find that we come within the

position which the Commission maintained in its brief, filed as amicus curiae in A. C. Frost & Co. v. Coeur d'Alene Mines Corp. 312 US 38. There the Commission advised the Supreme Court, inter alia, that "The fundamental purpose of the Securities Act of 1933 ..... is to protect the investing public... And it would be anomalous to rest... an injury to the investors upon the fact that the transaction in which the securities were distributed violated the Act, which was designed to protect those investors."

Likewise in Judson v. Buckley, 130 F. 2d 179 (CCA 2) the Commission in an amicus curiae brief recommended non-enforcement, although a registration statement on file failed to disclose accurately certain interests in the shares offered. According to Loss, Securities Regulation, page 1071, it was emphasized that while the statement was false the errors in it were not prejudicial to the public.

In the case now before the Commission, about the only additional information which a prospectus in proper statutory form would have disclosed would have been some details as to the voting trustees' connections with the company and the amount of their stockholdings. Most of which was well known to everyone, or should have been through the Dec. 31 letter and the proxy-statement, etc. sent to all stockholders in connection with the September 1953 annual meeting.

Finally, we hope that you gentlemen and the Commission will find some parallel in your conclusions reported in Crooker v. S. E. C., 161 F (2d) 944 (C. C. A.), a mandamus action, in which the Commission stated, according to the opinion, that the stop order proceeding asked by

petitioner would be detrimental rather than beneficial to the interests of investors. The Circuit Court of Appeals pointed out that "The language (of the Act) is permissive merely, conferring administrative discretion upon the Commission."

We have sought to present the full facts, to the end that in exercising its power of administrative discretion the Commission would be able to appraise the public interest element of the case. As we look at it, up to now no one has been injured in the slightest. Waterbury bought voting trust certificates which it knew all about. It is not injured, nor are those who sold their voting trust certificates and received the full price. Rather, those would be injured (if registration would be required although such would now make it impossible to keep the Voting Trust effective in view of Waterbury's purchases), who elected to stay in the trust - predominantly the small stockholders, those who most need protection.

These stockholders entered the Voting Trust in good faith, in reliance on its terms and on the integrity of the voting trustees. To throw them to the wolves now, at the same time fully accomplishing the Waterbury purpose of gaining complete control and ending all hope of a good market, would certainly compromise the trustee's good faith in the minds of our local stockholders. Were the voting trustees forced to this action, it would appear highly anomalous that such action be taken in the name of a great public protection statute.

We have at all times recognized that you gentlemen of the Securities and Exchange Commission are guardians of the public interest. Never have we taken an adversary position, but rather hoped to assist, by

full disclosures in the performance of your duties. The depositary and the voting trustees relied on our reporting and interpretation of our conferences. In matters of this importance, where many members of your staff are necessarily involved, oral conferences involve certain perils, and we welcome this opportunity of putting the above in writing for your files.

Respectfully yours,

WEIPERT AND WEIPERT

By

WJW:MRB